(26,889)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 803.

THOMAS P. KENNEY, AS ADMINISTRATOR OF THE ESTATE OF DONALD E. KENNEY, DECEASED, PETITIONER,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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United States of America.

STATE OF ILLINOIS, *ss:*

At a Term of the Supreme Court, Begun and Held at Springfield, on Tuesday, the Second Day of April, in the Year of Our Lord One Thousand Nine Hundred and Eighteen, Within and for the State of Illinois.

Present: Orrin N. Carter, Chief Justice; Justice James H. Cartwright, Justice Frank K. Dunn, Justice Charles C. Craig, Justice William M. Farmer, Justice George \. Cooke, Justice Warren W. Duncan; Edward J. Brundage, Attorney General; Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL, *Clerk.*

Be it remembered, that to-wit, on the 13th day of March, A. D. 1918, the same being one of the days in vacation before the term of Court aforesaid, a record of the proceedings had in the Circuit Court of Kane County was filed by Appellant, Thomas P. Kenney, Administrator of the estate of Donald A. Kenney, deceased, in the office of the Clerk of the Supreme Court of Illinois in words and figures following, to-wit:

1 United States of America.

STATE OF ILLINOIS,
County of Kane, ss:

Pleas Before the Honorable C. F. Irwin, One of the Three Judges of the Sixteenth Judicial Circuit of the State of Illinois and Presiding Judge of the Circuit Court of Kane County, in the State Aforesaid, at a Term Thereof Begun and Held at the Court House, Geneva, in said County and State, on the Third Monday (Being the 19th Day) of November, in the year of our Lord One Thousand Nine Hundred and Seventeen, and of the Independence of the United States the One Hundred and Forty-second.

Present: Honorable C. F. Irwin, one of the three Judges of the Sixteenth Judicial Circuit of the States of Illinois; Justus L. Johnson, Clerk; Charles L. Abbott, State's Attorney; B. E. Richardson, Sheriff.

Attest:
JUSTUS L. JOHNSON, *Clerk.*

Court was opened by due proclamation according to law.

* * * * * * *

Be it remembered, That on, to-wit, the 20th day of June, A. D. 1917, a præcipe was filed in said court, which said præcipe is in the words and figures, as follows, to-wit:

2 STATE OF ILLINOIS,
County of Kane:

Circuit Court, Kane County, September Term, A. D. 1917.

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased, Plaintiff,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, Defendant.

Debt.

The Clerk of said Court will issue a summons, in the above cause, directed to the Sheriff of Kane County, in a plea of Debt, returnable at the September Term of said Court, A. D. 1917, to the damage of the Plaintiff of Twenty Two Thousand Dollars.

BLUM, WOLFSOHN & BLUM &
RAYMOND & NEWHALL,
Plaintiff's Attorney-.

To Justus L. Johnson, Esq., Clerk. June 19, 1917.

Filed June 30th, 1917. Justus L. Johnson, Clerk.

3 Be It Remembered, that on, to-wit, the 6th day of July, A. D. 1917, an Affidavit for Attachment was filed in said Court which said Affidavit for Attachment is in the words and figures, as follows, to-wit:

STATE OF ILLINOIS,
Kane County, ss:

Circuit Court of Kane County.

THOMAS P. KENNEY, as Administrator of the Estate of Donald A. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

In Aid.

Harry J. Fireman, being duly sworn, deposes and says, That he is the duly authorized agent in this behalf of Thomas P. Kenney, as Administrator of the Estate of Donald A. Kenney, deceased; that the Supreme Lodge of the World Loyal Order of Moose, a corporation, is indebted to Thomas P. Kenney, as Administrator of the estate of Donald A. Kenney, deceased, after allowing all just credits and set-offs, in the sum of Twenty Two thousand Dollars and no cents, upon a judgment recovered against the said Supreme Lodge of the World Loyal Order of Moose to recover which amount an action has been commenced by said creditor against said debtor, in said Court, and is now pending therein, and deponents prays an attachment in aid thereof; and deponent further states that said Supreme Lodge of World Loyal Order of Moose is not a resident of this State, and that its place of residence is at Anderson, in the State of Indiana; and further deponent sayeth not.

HARRY J. FIREMAN.

4 Subscribed and sworn to before me this 6th day of July, A. D. 1917.

[SEAL.] JUSTUS L. JOHNSON,
Clerk of Kane County Circuit Court.

Filed July 6th, A. D. 1917. Justus L. Johnson, Clerk.

Be It Remembered, That on, to-wit, the 6th day of July, A. D. 1917, an Attachment Bond was filed and approved in said Court which said Attachment Bond is in the words and figures, as follows, to-wit:

Know All Men by These Presents, That we, Thomas P. Kenney, as Administrator of Donald A. Kenney, deceased, as Principal, and the National Surety Company, a corporation as surety, are firmly bound unto Supreme Lodge of the World Loyal Order of Moose a corporation in the penal sum of Forty Four Thousand ($44,000.00)

Dollars and no cents, lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 6th day of July, A. D. 1917.

The condition of the above obligation is such, that whereas, there is now pending and undetermined in the Circuit Court of Kane County, in the state of Illinois, a certain action of debt, wherein said Thomas P. Kenney, as administrator of the estate of Donald A. Kenney, deceased, is plaintiff, and said Supreme Lodge of the World Loyal Order of Moose, a corporation, is defendant; and whereas the above bounden plaintiff has on the day of the date hereof,
5 prayed an attachment out of said Circuit Court, at the suit of said Thomas P. Kenney, as administrator of the estate of Donald A. Kenney, deceased, against the estate of the above named Supreme Lodge of the World Loyal Order of Moose, a corporation, in aid of said suit at law for the sum of Twenty two thousand ($22,000.00) Dollars and no cents, and the same being about to be sued out of said Court, returnable to the third Monday of September, A. D. 1917, to the term of said Court then to be holden;

Now if said Thomas P. Kenney, as administrator of the estate of Donald A. Kenney, deceased, shall prosecute his said suit with effect, and said attachment shall not be dissolved, or in case of failure in such suit, or the dissolution of such attachment, shall well and truly pay and satisfy Supreme Lodge of the World Loyal Order of Moose, a corporation, all such costs in said suit, and such damages as shall be awarded against said Thomas P. Kenney, as administrator of the estate of Donald A. Kenney, deceased, his heirs, executors or administrators in any suit or suits which may hereafter be brought for wrongfully suing out said attachment then the above obligation to be void; otherwise to remain in full force and effect.

THOMAS P. KENNEY, [SEAL.]
As Admr. of the Estate of
Donald A. Kenney, Decd.

[CORPORATE SEAL.]

NATIONAL SURETY COMPANY, [SEAL.]
By W. HERBERT STEWART,
Resident Vice-President.

Attest:
ANTON A. BLAZEVICH, [SEAL.]
Resident Assistant Secretary.

Taken, entered into and acknowledged before me this — day of ——.

—— ——.

STATE OF ILLINOIS,
County of Cook, ss:

I, Harry F. Keator, a Notary Public of Cook County, in the State of Illinois, do hereby certify that W. Herbert Stewart, Resident Vice

President and Anton A. Blazevich, Resident Assistant Secretary, of National Surety Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument for and on behalf of National Surety Company for the uses and purposes therein set forth.

Given under my hand and notarial seal at my office in the City of Chicago, in said County, this 3rd day of July, A. D. 1917.

[NOTARIAL SEAL.] HARRY F. KEATOR,
Notary Public.

My commission expires Feb. 5th, 1918.

Filed and approved, July 6th, A. D. 1917. Justus L. Johnson, Clerk.

Be It Remembered, that on, to-wit, the 9th day of July, A. D. 1917, a Summons was filed in said Court, which said Summons is in the words and figures as follows, to-wit:

STATE OF ILLINOIS,
County of Kane, ss:

The People of the State of Illinois to the Sheriff of Kane County, Greeting:

We Command You to summon Supreme Lodge of the World, Loyal Order of Moose, a corporation, if it shall be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Geneva, in said County, on the Second Monday of September, 1917, to answer unto Thomas P. Kenney, Administrator of the estate of Donald A. Kenney, deceased, in a plea of Debt to the damage of said plaintiff as he says in the sum of Twenty two thousand Dollars.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Justus L. Johnson, Clerk of said Court, and the seal thereof at his office in Geneva, in said Kane County, this 20th day of June, A. D. 1917.

[SEAL.] JUSTUS L. JOHNSON, *Clerk.*

7 STATE OF ILLINOIS,
County of Kane, ss:

I have duly served the within writ upon the within named Supreme Lodge of the World Loyal Order of Moose, a corporation, by reading and at the same time delivering to William Trickett Giles, Supreme Secretary of the within named Supreme Lodge of the

World, Loyal Order of Moose, a true copy thereof this 28th day of June, 1917, as I am therein commanded.

B. E. RICHARDSON, *Sheriff*,
By —— ——, *Deputy*.

Filed July 9th, A. D. 1917. Justus L. Johnson, Clerk.

Be It Remembered, That on, to-wit, the 21st day of August, A. D. 1917, a Declaration was filed in said Court which said Declaration is in the words and figures, as follows, to-wit:

8 In the Circuit Court for the Sixteenth Circuit of Illinois.

No. —.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Thomas P. Kenney, administrator of the estate of Donald A. Kenney, deceased, by Blum, Wolfsohn & Blum, his attorneys, complains of Supreme Lodge of the World Loyal Order of Moose, a corporation, of a plea of debt.

For that whereas, on the 10th day of April, A. D. 1915, in the City Court of Birmingham, in the County of Jefferson, State of Alabama, the same being a court of general jurisdiction, duly created and organized under the laws of said State of Alabama, by the consideration and judgment of said court, the plaintiff recovered against the said defendant, Supreme Lodge of the World, Loyal Order of Moose, a corporation, the sum of Eighteen Thousand ($18,000.00) Dollars, the amount of the plaintiff's debt and damages, as ascertained and assessed by the jury, upon the proof produced upon the trial of said cause, besides his costs in said cause expended, such costs being taxed at the sum of Six Hundred Sixty seven and 85/100 ($667.85) Dollars, whereof the defendant was convicted; that said judgment is unpaid in whole or in part; that there is due upon said judgment the sum of Eighteen Thousand ($18,000.00) Dollars, together with costs as aforesaid, and interest thereon from the date of its rendition, at the rate of eight (8%) per cent per annum, being the rate fixed by the laws of the State of Alabama, and that said judgment still remains in full force; yet the defendant has

9 not paid to the plaintiff the sum of money recovered by him as aforesaid, together amounting to the sum of Twenty two thousand ($22,000.00) Dollars, or any part thereof, but refuses so to do, to the damage of the plaintiff in the sum of Twenty two thousand ($22,000.00) Dollars.

And therefore he brings his suit, etc.

BLUM, WOLFSOHN & BLUM AND
RAYMOND & NEWHALL,
Attorneys for Plaintiff.

STATE OF ILLINOIS,
County of Cook, ss:

Henry S. Blum, of the City of Chicago, County of Cook, and State of Illinois, makes oath, and says that he is the duly authorized agent of the plaintiff herein; that the demand of the plaintiff in the above entitled cause is for money due upon a judgment recovered by the plaintiff against the defendant in the City Court of Birmingham, in the County of Jefferson, State of Alabama, and that there is due the plaintiff from the defendant, after allowing to the defendant all just credits, deductions and set offs, the sum of Twenty one thousand nine hundred seven ($21,907.00) Dollars.

HENRY S. BLUM.

Subscribed and sworn to before me this 20 day of August, 1917.
[SEAL.]
MARY BLUM,
Notary Public.

Filed August 21st, A. D. 1917. Justus L. Johnson, Clerk.

10 Be it remembered, That on, to-wit, the 4th day of September, A. D. 1917, an attachment writ was filed in said Court, which said attachment writ is in the words and figures, as follows, to-wit:

STATE OF ILLINOIS,
Kane County, ss:

The People of the State of Illinois to the Sheriff of Kane County, Greeting:

Whereas, Thomas P. Kenny, as administrator of the estate of Donald A. Kenny, deceased, of the County of Cook and State of Illinois, hath complained to Clerk of the Circuit Court of said Kane County, that the Supreme Lodge of the World Loyal Order of Moose, a corporation, of the County of Kane and State of Illinois, are justly indebted to Thomas P. Kenny as administrator of the estate of Donald C. Kenny to the amount of Twenty Two thousand Dollars and that the said Supreme Lodge of the World Loyal Order of Moose, a corporation is not a resident of this State; and the said Thomas P. Kenny as Administrator etc. having given bond and security according to law.

We therefore command you that you attach so much of the estate, real or personal of the said Supreme Lodge of the World Loyal Order of Moose to be found in your County, as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate so attached in your hands to secure, or

so to provide that the same may be liable to further proceed-
11 ings thereupon, according to law, and that you summon Supreme Lodge of the World Loyal Order of Moose, a corporation to appear and answer the complaint of the said Thomas P. Kenny as administrator etc. at a term of the Circuit Court to be holden at the Court House, in Geneva, within and for the County of Kane aforesaid, on the 10th day of September, next, and that you also summon the First National Bank of Batavia and such other persons as you shall be required by the said Thomas P. Kenny as Administrator etc. as Garnishee, to be and appear before the said Court on the said 10th day of September next, then and there to answer to what may be objected against them when and where you shall make known to the said Court how you have executed this writ. And have you then and there this writ.

Witness, Justus L. Johnson, Clerk of our said Court, and the seal thereof at his office in Geneva, in said Kane County, this 6th day of July, A. D. 1917.

[SEAL.] JUSTUS L. JOHNSON, *Clerk.*

Following endorsements appear on said writ:

STATE OF ILLINOIS,
County of Kane, ss:

I have duly served the within writ upon the within named The First National Bank of Batavia, Illinois, as Garnishee, by delivering to C. D. Newlin, Cashier of the within named First National Bank of Batavia, a true copy thereof, and at the same time paid to C. D. Newlin One Dollar and 30/100 mileage and fees, this 6th day of July, A. D. 1917.

Sheriff's fees $3.15 paid.

B. E. RICHARDSON, *Sheriff,*
CHARLES NELSON, *Deputy.*

12 STATE OF ILLINOIS,
County of Kane, ss:

I have duly served the within writ upon the within Supreme Lodge of the World Loyal Order of Moose, a corporation, by reading and at the same time delivering a true copy thereof to William Trickett Giles, Supreme Secretary of the within named Supreme Lodge of the World, Loyal Order of Moose, this 9th day of July, A. D. 1917.

B. E. RICHARDSON, *Sheriff.*

Fees.

Levy	$1.65
Bond	.50
	$1.15

COPY BOUND CLOS

STATE OF ILLINOIS,
County of Kane, ss:

By virtue of the within writ I have this day attached the following described property to-wit:

Percheron Horses:

1 Stallion Maple Lawn Prince No. 86464.
1 Gray mare Christine No. 70660.
1 Gray mare Pansy 2nd No. 45266.
1 Gray Mare Ellover No. 55201.
1 Gray Mare Clodagh No. 68691.
1 Black " Madge No. 75372.
1 Bleck Mare Marietta No. 75728.
1 Gray Mare Duplicate No. 35650.
1 Black Mare Coquette No. 85660.
1 Gray mare Viola No. 77954.
1 Black mare Dona No. 11407.
1 Gray mare Rennessance No. 44422.
1 Black mare Dorothy F. No. 58692.
1 Black mare Melva No. 77393.
1 Gray Mare L. Valder's No. 59339.

13

1 Black Mare Alice No. 65866.
1 Black Mare Eva N. No. 84703.
1 Gray Mare Primrose No. 93835.
1 Black Mare Josephine No. 85935.
1 Gray Mare Lady Honorable No. 47494.
1 Black Mare Helen J. No. 73391.
1 Gray Mare Eugenia No. 49318.
1 Black Mare Kamille No. 77567.
1 Roan Mare Flossie No. 91437.
1 Gray Yearling Violet No. 125278.
1 Gray 2 yr. Old Flossie E. No. 116172.
1 Black 2 Yr. Old L. Hensly No. 116173.
1 Black Stud (Kamille's.)
1 Stud Yr. Mooseheart Kink No. 125281.
1 Stud Yr. Lord Honorable No. 125281.
1 Stud Colt Lady Hensly's.
1 Stud Colt Lady Honorable's.
1 Filly Foal Colt Helen Jr.
1 " Yr. Ellover's.
1 " " Dona.

Grade Horses:

1 Yr. Filly Nelly.
1 Sorrel Gelding Dan.
1 " " Sam.
1 Black " Nig.

1 Black Gelding Tom.
1 Bay " Crown.
1 " Mare Arizona.
1 " " Bess.
1 " " Ruth.

14

1 " " Beauty.
1 " " Molly.
1 " " Shore Molly.
1 Roan " Belle.
1 Grade Stallion Diamond.
1 Grade Colt Bess.

Pure Bred Holstein:

1 Bull Iowana Pontiac Waldorf #108766.
1 Roland Yislet No. 78136.
1 Wayne Mercedes De Kol #152751.
1 Verhelle May Colantha #248509.
1 Iam Oak Kay 2nd #232607.
1 Susie Hendricka De Kol #189395.
1 Careme Canary Paul #274191.
1 Maggrath Mechthilda #215533.
1 Bonnie Kordyke Tubie #1014.
1 Miss Blue Label Bonnie #259540.
1 Hattie Dutchland Pontiac #218427.
1 Concordia Netherland Pietutja #202355.
1 Jessie Johana Corncopia #279908.
1 Tuebie Legis Tirania #244927.
1 Jessie Fobes Craddock Homestead #2802.
1 Mooseheart Zeffe De Kol #387911.
1 " Korndyke Belle #287912.
1 " Butter Kind Betsy #287013.
1 " Countess #287914.
1 " Jessie Pietertje #337383.
1 Glen Rose Beets #197898.
1 Sethje Beets Hengerveldt #186678.
1 Princess Hartog Belle #337343.

15

1 Moosheart P-ntiac Betsy #336024.
1 Moosheart Horndyke Johanna Belle #338399.
1 Moosheart Pontiac De Kol Empress #336020.
1 " Hendrika De Kol Beauty #336021.
1 Mandane Lady #336022.
1 Mooseheart Korndyke Coggin No. 336025.
1 " " Mercedes Miss #336023.
4 Heifer Calves.
1 " " (H. D. Pontiac).
1 " " (C. N. Pietutje).

Quantity.	Grade Cattle.
49	Grade.
50	"
36	"
29	"
18	" Springer.
	Heifer Dry.
21	"
22	"
41	"
24	"
46	" Springer.
33	" "
55	" "
28	" "
1	Grade Heifer Dry.
2	Grade " Springers.
42	" "
47	" "
30	" "
31	" "
52	" "
15	" "

16

Blind Heifer Grade:

22	Grade Heifer.
25	" "
45	" "
27	" "
38	" "
39	" "
19	" "
20	" "
20	" "
1	Grade Springer.
11	" Heifers.

Swine:

1 1 Yr. Old Boar Double's Climax #231990.
1 1 Yr. Old Boar—Mooseheart Rival's Masterpiece No. 228157.
1 5 Yr. Old Boar Brookline Duchess Master Yet No. 172165.
1 2 Yr. Old Sow No. 258.
1 2 " " " " " 259.
1 " " " " " " 260.
1 " " " " " " 267.
1 3 " " " " 236.

1 4 Yr. Old Sow No. 63.
1 4 " " " " 27.
1 4 " " " " 244.
1 2 " " " " 253.
1 " " " " " 254.
1 3 " " " " 216.
1 5 " " " " 240.
1 4 " " " " 72.
1 2 " " " " 264.
1 3 " " " " 209.
1 4 " " " " 234.

17

1 3 Yr. Old Sow No. 213.
1 2 " " " " 256.
1 2 " " " " 205.
1 2 " " " " 249.
1 3 " " " " 212.
1 3 " " " " 290.
1 5 " " " " 214.
1 6 " " " " 235.
1 2 " " " " 257.
1 1st Litter 1916 Gilt Bred.
2 2nd Litter 1916 Gilt Bred.
1 5th " " " "
1 6th " " " "
1 6th " " " " Open.
2 8th " " " " Bred.
1 8th " " " " Open.
1 8th " " " " "
1 9th " " " " "
1 10th " " " " Bred.
2 10th " " " " Open.
1 11th " " " " "
1 13th " " " " "
1 13th " " " " Bred.
1 15th " " " " "
3 19th " " " " "
2 20th " " " " "
6 Sept. " " Gilt.
14 Aug. " " Gils.
1 Sept. " " Boars.
1 Aug. " " "

18

1 12th Littler 1916 Boars.
5 1916 Spring Pigs.
5 Pigs in fattening July.
26 " " " Sept.

32 Pigs in fattening Aug.
3 " " " Oct.
7 " " " Jan. 1917.
37 " Boars 1917 litter.
37 " Sows 1917 "
2 Fat Hogs stags.

Dated this 23rd day of August, A. D. 1917.

B. E. RICHARDSON, *Sheriff.*

Filed September 4th, A. D. 1917. Justus L. Johnson, Clerk.

Be It Remembered, That on, to-wit, the 10th day of September, A. D. 1917, a Motion was filed in said Court, which said Motion is in the words and figures, as follows, to-wit:

STATE OF ILLINOIS,
County of Kane, ss:

In the Circuit Court Thereof, November Term, A. D. 1917.

No. 36062.

THOMAS P. KENNEY, Administrator of the Estate of Don A. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Now comes Supreme Lodge of the World Loyal Order of Moose, a corporation, by E. J. Henning, and Alschuler, Putnam & Flannigen, its attorneys, entering its special appearance herein and
19 only for the purpose of this motion, and moves that the cause be continued for the term at the cost of the plaintiff for failure to file with his declaration the instrument of writing on which the action is brought ten days before the term at which the summons was made returnable.

E. J. HENNING.
ALSCHULER, PUTNAM & FLANNIGEN.

Filed September 10th, A. D. 1917. Justus L. Johnson, Clerk.

Be It Remembered, That on, to-wit, the 11th day of October, 1917, a copy of instrument sued on was filed in said Court, which said copy of instrument sued on is in the words and figures, as follows, to-wit:

STATE OF ILLINOIS,
County of Kane, ss:

In the Circuit Court Thereof.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

And now comes the plaintiff in the above entitled cause, by Blum, Wolfsohn & Blum, and Raymond & Newhall, his Attorneys, and pursuant to leave of Court first had and obtained, files herein copy of the instrument sued on in the above entitled cause.

____ ____,
____ ____,
Attorneys for Plaintiff.

20 *Summons and Complaint.*

THE STATE OF ALABAMA,
Jefferson County:

City Court of Birmingham.

To any Sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon Superior Lodge of the World, Loyal Order of Moose, John P. Abbott, Dave U. Williams, R. E. Vanlandingham, Dr. L. C. Neill and Birmingham Lodge No. 432 of Loyal Order of Moose to appear before the City Court of Birmingham, in and for said County, at the place of holding the same, within thirty days from the service of this summons and complaint, then and there to answer, plead or demur to the complaint hereto annexed of Thomas P. Kenny, as the administrator of Donald A. Kenny.

You are required to execute this process instanter, and to return the same immediately upon the execution thereof.

Witness my hand this 27th day of August, 1913.

SAM M. BLAKE,
Clerk and Register.

COPY BOUND CLOS

Complaint in the City Court of Birmingham.

THOMAS P. KENNY, as the Administrator of Donald A. Kenny, Plaintiff,

vs.

SUPERIOR LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, JOHN P. ABBOTT, Dave U. Williams, R. E. Vanlandingham, Dr. L. C. Neill, and Birmingham Lodge No. 432 of Loyal Order of Moose, Defendant-.

The Plaintiff claims of the Defendant- Fifty Thousand Dollars as damages, for that heretofore, to-wit, on the 24th day of July, 1913, defendants were engaged in or about initiating into an order *of* society, to-wit, the Loyal Order of Moose, plaintiff's said intestate, Donald A. Kenny, or in or about the administration of certain rites or performances connected or associated with such initiation, and so negligently conducted themselves in reference, thereto, that as a proximate consequence of said negligence said Donald
21 A. Kenny was caused to die.

Second Count.

Plaintiff claims of defendant- Fifty Thousand Dollars, as damages, for that heretofore, on, to-wit, the 24th day of July, 1913, defendant's servants or agents, acting within the line and scope of their authority as such, in or about the initiation of plaintiff's intestate, Donald A. Kenny, or in or about rites or ceremonies or performances associated with or in connection with said initiation which servants or agents were acting within the line and scope of their authority as such, wantonly or intentionally caused the death of said intestate, Donald A. Kenny.

Third Count.

Plaintiff claims of defendant Fifty Thousand Dollars as damages, for that defendants wantonly or intentionally, to-wit, on the 24th day of July, 1913, caused the death of plaintiff's intestate, Donald A. Kenny, in Birmingham, Alabama, while engaged in or about initiating said intestate into the order or society of Loyal Order of Moose, or in or about rites, ceremonies or performances in connection with or associated with such initiation.

HARSH, BEDDOW & FITTS,
Attorneys for Plaintiff.

We demand a jury in the trial of this cause.

HARSH, BEDDOW & FITTS,
Attorneys for Plaintiff.

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We demand a jury in the trial of this cause.

HARSH, BEDDOW & FITTS,
Attorneys for Plaintiff.

22 *Sheriff's Return.*

Executed this the 13th day of September, 1913, by leaving a copy of the within with R. E. Vanlandingham.

W. K. McADORY, *Sheriff,*
By J. M. STEELE, *D. S.*

Executed this the 13th day of September, 1913, by leaving a copy of the within with Dave V. Williams.

W. K. McADORY, *Sheriff,*
By J. WM. STEELE, *D. S.*

Executed this the 16th day of September, 1913, by leaving a copy of the within with Jno. P. Abbott.

W. K. McADORY, *Sheriff,*
By J. WM. STEELE, *D. S.*

Executed this the 18th day of September, 1913, on Birmingham Lodge No. 432 of Loyal Order of Moose by leaving a copy of the within with Dave U. Williams, Secy. of said Company.

W. K. McADORY, *Sheriff,*
By R. E. HOWARD, *D. S.*

Executed this the 18th day of September, 1913, on Superior Lodge of the World Loyal Order of Moose by leaving a copy of the within with D. U. Williams, District Deputy Supreme Dictator of said *Company.*

W. K. McADORY, *Sheriff,*
By R. E. HOWARD, *D. S.*

Executed this the 18th day of September, 1913, on Loyal Order of Moose by leaving a copy of the within with D. U. Williams, Secy. of said *Company.*

W. K. McADORY, *Sheriff,*
By R. E. HOWARD, *D. S.*

Executed this the 22nd day of September, 1913, by leaving a copy of the within with Dr. L. C. Neill.

W. K. McADORY, *Sheriff,*
By R. E. HOWARD, *D. S.*

Filed in office this the 5th day of September, 1913. Sam M. Blaker, Clerk and Register.

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23 *Demurrer.*

City Court of Birmingham, Alabama.

No. 30549.

THOMAS P. KENNY, as the Administrator of Donald A. Kenny, Plaintiff,

vs.

SUPERIOR LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, JOHN P. ABBOTT, Dave U. Williams, R. E. Vanlandingham, Dr. L. C. Neill, and Birmingham Lodge No. 432 Loyal Order of Moose, Defendants.

Now come the defendants in the above entitled cause, and each of the defendants in said cause, separately and severally, and for demurrer to the complaint exhibited against them in said cause, and each count of said complaint, separately and severally, set down and assign the following demurrers to said complaint, and each count thereof, separately and severally, viz:

1. Said count is vague, indefinite and uncertain.
2. Said count does not state a cause of action against defendants, or either of them.
3. For that there is a misjoinder of parties defendant.
4. For that the manner in which plaintiff's said intestate is said to have lost his life is not sufficiently or definitely described.
5. For that the act or acts alleged to have caused the death of plaintiff's said intestate are not sufficiently and definitely described.

ARTHUR H. JONES,
ALLEN & BELL,
Attorneys for Defendants.

Filed in office October 2nd, 1913. Sam M. Blake, Clerk and Register.

24 *Demurrer.*

In the City Court of Birmingham.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased, Plaintiff,

vs.

SUPERIOR LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, JOHN P. ABBOTT, David U. Williams, R. E. Vanlandingham, Dr. L. C. Neill, and Birmingham Lodge No. 433 of Loyal Order of Moose, Defendants.

Now come the defendants and by leave of court first had and obtained, separately and severally file and assign the following addi-

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tional grounds of demurrer to the complaint and each count thereof, separately and severally, viz:

6. For that it does not appear by the averments thereof whether the Superior Lodge of the World, Loyal Order of the Moose is a corporation, partnership or association.

7. For that it does not appear by the averments thereof whether the Birmingham Lodge No. 433 of Loyal Order of Moose is a partnership, association or body corporate.

8. For that by the averments thereof no *casual* connection is shown between the alleged acts of negligence and the resultant damages claimed.

9. For that the alleged negligence of the defendant is stated as a mere conclusion of the pleader and no facts are stated or alleged showing, as required by law, that the defendants or either of them were guilty of any act of negligence which proximately resulted in the death of the plaintiff's intestate as alleged.

25 10. For that it does not appear from the averments thereof that the defendants or either of them were authorized to act by agents or servants in and about the doing of the matter and things which said complaint alleges were being done by the servants or agents of the defendant, acting within the line and scope of their employment as such.

11. For that it does not appear from the averments thereof how or in what way the Superior Lodge of the World Loyal Order of Moose was guilty of any acts of negligence proximately causing the death of plaintiff's intestate.

12. For that it does not appear from the averments thereof how or in what way the Birmingham Lodge No. 433, Loyal Order of Moose was guilty of any acts of negligence proximately causing the death of plaintiff's intestate.

13. For that it does not appear from the averments thereof what rites or what performance the defendants, their agents or servants, were engaged in *what* the plaintiff's alleged intestate was killed.

14. For that it does not appear what rites the defendants, or their agents or servants were administering to the plaintiff's intestate at the time of his death.

14. For that it does not appear from the averments thereof that the initiation and ceremony or other performances which are alleged to have been had were such as that they could have been done or performed by an agent or servant.

15. For that it does not appear from the averments thereof that the matters and things alleged to have been done were such matters and things as could have been done by a servant or agent.

16. For that said complaint does not show or state in what capacity the Superior Lodge of the World Loyal Order of Moose is

26 sued, whether as a corporation, association or corporation or that it may be sued.

17. For that it does not appear therein that Birmingham Lodge No. 432 of Loyal Order of Moose is an individual, a corporation or association or that it may be sued.

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18. For that the complaint does not show that all the parties defendant may be sued in a corporate capacity, as partners or in any other capacity.

ALLEN, BELL & J. B. BURGIN,
Attorneys for Defendant-.

Filed in office this March 18th, 1914. Sam M. Blake, Clerk and Register.

Defendants' Pleas.

In the City Court of Birmingham.

No. 30549.

THOS. P. KENNY, as Admr., etc., Plaintiff,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, et al., Defendants.

Now come the defendants and plead to the complaint, and separately and severally to each separate and several count in the complaint, and assign each of the following pleas, separately and severally:

1. Not guilty.

2. The several averments therein contained are untrue.

3. At the time of the occurrence of the several matters and things therein set forth, said decedant had, with a knowledge of the probable danger to him of becoming a member of the Birmingham Lodge No. 432, Loyal Order of Moose, voluntarily, willingly and knowingly applied to said Lodge to be made a member of said Lodge, and initiated therein, and in the conduct and performance of the usual rites and ceremonies attendant in which he knew was dangerous to him and which danger to himself he appreciated becoming a member thereof, said decedant lost his life in performing his part thereof, and after being informed that certain persons with weak hearts and other physical ailments were undesirable members and not eligible to the said lodge, the said decedant knowing at the time that he then and there had a physical weakness or ailment of his heart which weakness rendered said init-ation dangerous to his life voluntarily assumed the risk to himself.

4. Defendant- for other and further plea thereto say, that the deceased knew that persons of unsound body were not eligible to become members in the lodge mentioned and with the knowledge decedant nevertheless negligently represented and told defendants that he was of sound body when in fact he was not sound in his body, but had a weak heart, and said decedant negligently undertook and attempted to join and be initiated into the said lodge while so diseased

and unsound in his body, and he thereby contributed proximately to the injuries causing his death.

5. That deceased, well knowing that he was a person not sound in body was unfit to become a member of said order, and physically unable to undergo the initiation therein, nevertheless, with such knowledge, deceased negligently undertook to join and become initiated as a member thereof, without disclosing to said order or the initiating members thereof his unsoundness of body, and he thereby negligently and proximately contributed by his said act to cause his own death.

28 6. That said decendant knowing- contributed to his own death in this that with a knowledge that he was not physically able and that he was unfit to become a member and be initiated into said order because of his physical weakness, the said decendent nevertheless negligently attempted to join and be initiated into and become a member thereof without informing defendants of his said physicial inability and unfitness, and he thereby negligently and proximately contributed to his own death in his negligent failure to disclose to the defendants his physical condition at the time he was attempting to obtain admission into said order.

ARTHUR H. JONES &
WILLIARD DRAKE,
ALLEN, BELL & J. B. BURGIN,
Attorneys for Defendants.

Filed in office this April 6th, 1915. Sam M. Blake, Clerk and Register.

Demurrer to Complaint as Amended.

In the City Court of Birmingham.

No. 30549.

THOS. P. KENNY, as Administrator of the Estate of Donald A. Kenny, Deceased, Plaintiff,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, et al., Defendants.

Now come the defendants, and each of them, separately and severally, and demur to the plaintiff's complaint as amended, and to each count thereof, severally and separately, and for grounds of demurrer thereto sets down and assign the following several and separate grounds, viz:

1. That the averments thereof are vague, indefinite and uncertain.

2. For that the averments thereof fail to state a cause of action against the defendant- or either of them.

3. For that the facts necessary to support said action are not set out therein with sufficient certainty.

4. For that the negligence attempted to be alleged therein is not shown with sufficient certainty.

5. For that it appears in and by said complaint as amended and in ach count thereof as amended, that said cause of action, if any, is ebarred by the statute of limitations of one year.

6. For that it appears in and by said complaint, as amended, and ach count thereof, as amended, that the act therein complained of as done or committed more than twelve months before the amend- ent of the complaint and each count thereof.

7. For that the averments therein fail to show any *casu* connection etween the defendant- and the act or acts alleged to have caused the eath of said Donald A. Kenny.

8. For that there is no averment therein showing any participation n the part of this defendant in or about the initiation of Donald A. enny, or that this defendant authorized any one to act for it in the itiation of said Donald A. Kenny.

9. For that it does not appear therein that the defendant acted by through its agent, servant or employee duly authorized to act for e defendant in the premises.

10. For that it does not appear that there was any privity between is defendant and the Loyal Order of Moose therein mentioned.

ARTHUR W. JONES &
WILLIARD DRAKE,
ALLEN, BELL & J. B. BURGIN,
Attorneys for Defendants.

Filed in office this April 6th, 1915. Sam M. Blake, Clerk and egister.

Minute Entry.

THOMAS P. KENNY, as Administrator of Donald A. Kenny,

vs.

UPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE; JOHN P. ABBOTT, Dave U. Williams, R. E. Vanlandingham, Dr. L. C. Neill, and Birmingham Lodge No. 432 of Loyal Order of Moose.

Present and presiding: Chas W. Ferguson, Judge of said Court.

On this the 5th day of April, 1915, came the parties by their attor- ys and the plaintiff by leave of Court amends his summons and mplaint by separate paper filed this day; the defendant- refile their murrers and said demurrers are by the Court heard and considered, Whereupon, It is ordered and adjudged by the Court that said de- urrers be and they are hereby overruled.

And now on this the 6th day of April, 1915, came the parties by eir attorneys and the demurrers to plea three are by the Court ard and considered, Whereupon,

It is ordered and adjudged by the Court that said demurrers be and they are hereby overruled; the demurrers to pleas four, five and six are by the Court heard and considered, Whereupon,

It is ordered and adjudged by the Court that said demurrers be and they are hereby sustained in so far as said pleas purport to answer counts two and three of the complaint,

And now on this the 10th day of April, 1915, came the parties by their Attorneys and issue being joined thereupon came a jury of good and lawful men, to-wit, J. S. Colvard and eleven others who, being duly empaneled and sworn according to law upon their oaths do say, "We, the jury, find for the defendants John P. Abbott, Dave U. Williams, R. C. Vanlanningham, Dr. L. C. Neill and Birmingham Lodge #432 of Loyal Order of Moose," and also "We the jury find
31 for the plaintiff and against the defendant Supreme Lodge of the World Loyal Order of Moose, and assess his damages at Eighteen Thousand ($18,000.00) Dollars" whereupon,

It is ordered and adjudged by the Court that the plaintiff is not entitled to have and recover of defendants John P. Abbott, Dave U. Williams, Dr. L. C. Neill and Birmingham Lodge #432 of Loyal Order of Moose, and that said defendants go hence without day and have and recover of plaintiff their costs in this cause expended for which let execution issue. It is further ordered and adjudged by the Court that plaintiff have and recover of defendant Supreme Lodge of the World Loyal Order of Moose the sum of Eighteen Thousand ($18,000.00) Dollars that being the amount of his debt and damages as ascertained and assessed by the jury upon the proof produced upon the trial of this cause, besides his costs in this cause expended for which let execution issue.

Certificate of Affirmance.

The Supreme Court of Alabama, October Term, 1916.

THE STATE OF ALABAMA,
Judicial Department:

To the Clerk & Register of the City Court of Birmingham, Jefferson County, Alabama, Greeting:

Whereas, the record and procedings of the City Court of Birmingham, in said County, in a certain cause lately pending in said Court between Supreme Lodge of the World, Loyal Order of Moose, Appellant, and T. P. Kenny et al., Appellee-, wherein by said Court it was considered adversely by said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said Appellant,

32 Now, it is hereby certified, that it was thereupon considered by our Supreme Court, on the 16th day of November, 1916, that said judgment of said City Court of Birmingham be in all things affirmed, and that it was further considered that the Appellant, Supreme Lodge of the World, Loyal Order of Moose and

American Surety Company of New York, surety on the appeal bond, pay the costs accruing in this Court and in the Court below.

It is also certified that it appearing that said parties have waived their right of exemptions under the laws of Alabama, it is ordered that execution issue accordingly.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 18th day of November, 1916.

ROBT. F. LIGON,
Clerk of the Supreme Court of Alabama.

Filed in office, Nov. 21, 1916. Sam M. Blake, Clerk & Register.

Clerk's Certificate.

Circuit Court.

THE STATE OF ALABAMA,
Jefferson County:

I, William J. Waldrop, Clerk of the Circuit Court of the Tenth Judicial Circuit, in and for said County and State, do hereby certify that the foregoing pages, numbered from 1 to 12 inclusive, contain a full, true and complete copy of the summons and complaint, appearance, pleas and demurrers filed by the defendant and the judgment entry and certificate of affirmance in the cause wherein Thomas P. Kenny, as the Administrator of Donald A. Kenny, is plaintiff, and The Superior Lodge of the World Loyal Order of Moose,
33 is defendant, which was tried and determined in this Court on the 6th day of April, 1915, wherein judgment was rendered in favor of the Plaintiff and against the defendant in the sum of Eighteen thousand dollars.

I further certify that on the 15th day of January, 1917, the City Court of Birmingham, Jefferson County Alabama, and the Circuit Court of Jefferson County, Alabama, were consolidated and marged into the Circuit Court of the Tenth Judicial Circuit of Alabama, by an Act passed by the Legislature of Alabama, approved August 16, 1915, and that all the files and records, both pending and in judgment, of the said City Court of Birmingham, Jefferson County, Alabama, are now an inherent part of the said Circuit Court of the Tenth Judicial Circuit of Alabama, and that I, the said William J. Waldrop, am Clerk of the said Consolidated Court, and ex officio Clerk of the said City Court of Birmingham, Jefferson County, Alabama, and have full power and authority in all causes and actions, pending and in judgment, which formerly belonged to the said City Court of Birmingham, Jefferson County, Alabama.

Witness my hand and seal of office this the 27th day of August, 1917.

WM. J. WALDROP,
Clerk Circuit Court Tenth Judicial Circuit of Alabama.

34 STATE OF ALABAMA,
Jefferson County, ss:

I, William J. Waldrop, Clerk of the Circuit Court of the Tenth Judicial Circuit in and for said State and County do hereby certify that the foregoing pages numbered from one to twelve inclusive contain a full, true and correct copy and exemplification of the judgment of the City Court of Birmingham in the cause of Thomas P. Kenny, as the Administrator of Donald A. Kenny vs. Superior Lodge of the World, Loyal Order of Moose, John P. Abbott, Dave U. Williams, R. E. Vanlandingham Dr. L. C. Neill, and Birmingham Lodge No. 432 of Loyal Order of Moose, as appears of record in said Court and I do hereby further certify that the said City Court of Birmingham, at the time of the rendition of said judgment and for years prior thereto was a court of general common law and equity jurisdiction in and for said County and State and that since the rendition of said judgment, by an act of the Legislature of the State of Alabama, approved August 16th, 1915, which by its terms was to take effect on the first Monday after the Second Tuesday in January, 1917, said City Court of Birmingham was consolidated with and became a part of the Circuit Court of the Tenth Judicial Circuit of Alabama, which was and is a court of general common law, equity and criminal jurisdiction, and all the papers, books, files and records of every kind belonging to or on file in the said City Court of Birmingham were transferred to and became a part of the papers, files, books and records of the said Circuit Court in and for the Tenth Judicial Circuit of Alabama, and that the Clerk of said Circuit Court was by the said act given full power to make complete and perfect
35 exemplification of any order, judgment, decree or proceeding and of every paper and record which formerly belonged to the said City Court of Birmingham as fully and effectually as the Clerk and Register of the City Court of Birmingham could have made but for said consolidation.

Witness my hand and the seal of said Circuit Court this the 29th day of August, 1917.

[SEAL.]

WILLIAM J. WALDROP,
Clerk of the Circuit Court of the Tenth Judicial Circuit of Alabama.

STATE OF ALABAMA,
Jefferson County:

I, John C. Pugh, one of the Judges of the Circuit Court in and for the Tenth Judicial Circuit of Alabama, do hereby certify that William J. Waldrop, whose name is signed to the preceding certificate of exemplification, is the Clerk of the Circuit Court in and for the Tenth Judicial Circuit of Alabama, duly elected and sworn and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said

Circuit Court in and for the Tenth Judicial Circuit of Alabama. and that the attestation thereof is in due form of law.

This the 29th day of August, 1917.

JOHN C. PUGH,
Judge of the Circuit Court of the Tenth Judicial Circuit of Alabama.

STATE OF ALABAMA,
Jefferson County:

I, William J. Waldrop, Clerk of the Circuit Court of the Tenth Judicial Circuit of Alabama, do hereby certify that Hon. John C. Pugh, whose name is signed to the foregoing certificate is one
36 of the Judges of the Circuit Court in and for said Tenth Judicial Circuit of Alabama, duly elected and sworn and that the signature of the said Judge is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of said Court this the 29th day of August, 1917.

[SEAL.] WILLIAM J. WALDORP,
Clerk of the Circuit Court of the Tenth Judicial Circuit of Alabama.

Filed October 11th, 1917. Justus L. Johnson, Clerk.

Be It Remembered, That on, to-wit, the 21st day of November, A. D. 1917, a Plea was filed in said Court, which said Plea is in the words and figures, as follows, to-wit:

STATE OF ILLINOIS,
County of Kane, ss:

In the Circuit Court Thereof, November Term, A. D. 1917.

Gen. No. 36062.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

And the said defendant Supreme Lodge of the World Loyal Order of Moose, a corporation, by E. J. Henning and Alschuler, Putman & Flannigen, its attorneys, comes and defends the wrong and injury and says, that on the 1st day of January, 1912, and ever since said date there was and is still in full force and effect in the State of

Alabama a certain statute or written law enacted by the Legis-
37 lature of said State which provides as follows:

"A personal representative may maintain an action and recover such damages as the jury may assess, in a Court of competent jurisdiction within the State of Alabama and not elsewhere, for the wrongful act, omission or negligence of any person or persons, or corporation, his or their servants or agents, whereby the death of his testator or intestate was caused if the testator or intestate could have maintained an action for such wrongful act, omission or negligence, if it had not caused death; such action shall not abate by the death of the defendant, but may be revived against his personal representative; and may be maintained, though there has not been prosecution or conviction, or acquittal of the defendant for the wrongful act, or omission or negligence."

And the defendant further says that Donald A. Kenny, of whose estate the plaintiff herein is administrator as aforesaid, died on the 24th day of July, 1913, in Birmingham, in the State of Alabama, and that his death was caused by injuries inflicted upon his person on said date and at the place last aforesaid.

Defendant further says that the judgment mentioned in said declaration and upon which plaintiff brings his said action was for damages assessed under and by virtue of the aforesaid statute of the State of Alabama for the negligent causing of the death of the said Donald A. Kenny at the time and place aforesaid; and this the said defendant is ready to verify; wherefore it prays judgment whether this Court can or will take further cognizance of the action aforesaid.

E. J. HENNING,
ALSCHULER, PUTNAM & FLANNIGEN,
Attorneys for Defendant.

38 STATE OF ILLINOIS,
County of Kane, ss:

In the Circuit Court Thereof, November Term, A. D. 1917.

Gen. No. 36062.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

Ralph C. Putnam, one of the attorneys for the defendant in this cause being duly sworn, makes oath and says that the plea hereunto annexed is true in substance and in fact.

RALPH C. PUTNAM.

Subscribed and sworn to before me this 20th day of November, A. D. 1917.

[SEAL.]

L. J. MILLER,
Notary Public.

Filed November 21st, A. D. 1917. Justus L. Johnson, Clerk.

Be It Remembered, that on, to-wit, the 26th day of November, A. D. 1917, a Notice was filed in said Court, which said Notice is in the words and figures, as follows, to-wit:

39 STATE OF ILLINOIS,
County of Kane, ss:

In the Circuit Court Thereof, November Term, A. D. 1917.

Gen. No. 36062.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

Gen. No. 36061.

JOHN C. GUSTIN, Administrator of the Estate of Christopher Gustin, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

To the Above Named Defendant in Each of the Above Entitled Causes or Alschuler, Putnam Flannigen, its Attorneys:

You Are Hereby Notified, That on Monday, the 26th day of November, 1917, we filed demurrer to each of the pleas in the above entitled causes, copy of which demurrer is hereto attached, and will appear before the Honorable M. Slusser, one of the Judges of said Circuit Court, at Geneva, Illinois, on said November 26th, 1917, at ten A. M. and ask the court to take up and dispose of the demurrer to each of the pleas in the above entitled causes.

Dated this 23rd day of November, 1917.

BLUM, WOLFSOHN & BLUM &
RAYMOND & NEWHALL,
Attorneys for Plaintiffs.

Received copy of the above notice and copy of demurrer this 23rd day of November, 1917.

E. J. HENNING,
ALSCHULER, PUTNAM & FLANNIGEN,
Attorneys for Defendant.

Filed November 26th, A. D. 1917. Justus L. Johnson, Clerk.

40 Be It Remembered, That on, to-wit, the 26th day of November, A. D. 1917, a Demurrer to Plea was filed in said Court which said Demurrer is in the words and figures as follows, to-wit:

STATE OF ILLINOIS,
County of Kane, ss:

In the Circuit Court of Kane County, November Term, A. D. 1917.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

And the plaintiff, as to the plea of the defendant by it above pleaded, says that the same and the matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to bar him, the plaintiff from his aforesaid action, and that he is not bound by law to answer the same, and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, the plaintiff prays judgment and his damages, etc., to be adjudged to him etc.

And the plaintiff shows to the court the following causes of demurrer to said plea, that is to say:

First, That the said plea of the said defendant is not sufficient in law by reason of the provisions of Section 1 of Article IV of the Constitution of the United States.

41 Second, That the said plea of the said defendant is not sufficient in law by reason of the provisions of Section 2 of Article IV of the Constitution of the United States.

Third, That the said plea is in other respects uncertain, informal and insufficient.

BLUM, WOLFSOHN & BLUM &
RAYMOND & NEWHALL,
Attorneys for Plaintiff.

Filed November 26th, A. D. 1917. Justus L. Johnson, Clerk.

Be It Remembered, That before, to-wit, on the 10th day of September, A. D. 1917, the same being one of the regular days of the September Term, A. D. 1917 of this Court, the following, among other proceedings were had and entered of record in said Court, in the words and figures, as follows, to-wit:

Present: Honorable C. F. Irwin, one of the three Judges of the Sixteenth Judicial Circuit of the State of Illinois; Justus L. Johnson, Clerk; Charles L. Abbott, States Attorney; B. E. Richardson, Sheriff.

Attest:

JUSTUS L. JOHNSON, *Clerk.*

36092.

THOMAS P. KENNY, Administrator of the Estate of Donald A. Kenny, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

Now on this day come the parties hereto by their respective attorneys and on their motion and by agreement it is ordered by the Court that the hearing on the motion for a continuance in this cause be and the same is hereby set for Wednesday, September 13th, A D. 1917, next.

42 Be it remembered, That *before,* to-wit, on the 12th day of September, A. D. 1917, the same being one of the regular days of the September Term, A. D. 1917, of this Court, the following, among other proceedings were had and entered of record in said Court, in the words and figures, as follows, to-wit:

Present: Honorable C. F. Irwin one of the three Judges of the Sixteenth Judicial Circuit of the State of Illinois; Justus L. Johnson, Clerk; Charles L. Abbott, State's Attorney; B. E. Richardson, Sheriff.

Attest:

JUSTUS L. JOHNSON, *Clerk.*

36062.

THOMAS P. KENNEY, Administrator of the Estate of Donald A. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

Now on this day come the parties hereto by their respective attorneys and on their motion and by agreement it is ordered by the Court that this cause be and the same is hereby continued for the present September Term; and on motion of the plaintiff it is further ordered that leave be and the same is hereby granted said plaintiff to file an amended declaration and copy of instrument sued on herein within two weeks from the date hereof.

43 Be it remembered, That before, to-wit, on the 21st day of December, A. D. 1917, the same being one of the regular days of the November term, A. D. 1917, of this Court, the following, among other proceedings, were had and entered of record in said Court, in the words and figures, as follows, to-wit:

Present: Honorable Mazzini Slusser one of the three Judges of the Sixteenth Judicial Circuit of the State of Illinois; Justus L. Johnson, Clerk; Charles L. Abbott, State's Attorney; B. E. Richardson, Sheriff.

Attest:
JUSTUS L. JOHNSON, *Clerk.*

36062.

THOMAS P. KENNEY, Administrator of the Estate of Donald A. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

Now on this day come the parties hereto by their respective attorneys and the Court now here after hearing the arguments of Counsel and being fully advised in the premises overrules the demurrer of plaintiff heretofore filed to the special plea of defendant in this cause to which ruling of the Court the plaintiff by his counsel then and there duly excepts.

44 Be it remembered, That on, to-wit, the 25th day of January, A. D. 1918, the same being one of the regular days of the November Term, A. D. 1917, of this Court, the following, among other proceedings, were had and entered of record in said Court, in the words and figures, as follows, to-wit:

Present Honorable Mazzini Slusser one of the three Judges of the Sixteenth Judicial Circuit of the State of Illinois; Justus L. Johnson, Clerk; Charles L. Abbott, State's Attorney; B. E. Richardson, Sheriff.

Attest:
JUSTUS L. JOHNSON, *Clerk.*

36962.

THOMAS P. KENNEY, Administrator of the Estate of Donald A. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

Now on this day come the parties hereto by their respective attorneys and the plaintiff herein hereby elects to stand by his demurrer heretofore filed to the special plea of the defendant in this cause and said defendants elects to stand by said special plea herein; and thereupon it is ordered and adjudged by the Court that the writ of summons heretofore issued out of and under the seal of this Court in this cause be and the same is hereby quashed, to which ruling of the Court the plaintiff by his counsel then and there duly excepts;

45 And thereupon said plaintiff having entered his exceptions herein prays an appeal from the judgment and order of this Court to the Supreme Court of the State of Illinois which appeal is allowed by the Court upon said plaintiff filing herein his appeal bond conditioned according to law in the penal sum of Two Hundred and Fifty ($250.00) Dollars with sureties to be approved by the Clerk of this Court within twenty days from the date hereof.

Be it remembered, That after, to-wit, on the 13th day of February, A. D. 1918, the same being one of the regular days of the February Term, A. D. 1918, of this Court, the following, among other proceedings, were had and entered of record in said Court, in the words and figures, as follows, to-wit:

Present: Honorable C. F. Irwin one of the three Judges of the Sixteenth Judicial Circuit of the State of Illinois; Justus L. Johnson, Clerk; Charles L. Abbott, State's Attorney; B. E. Richardson, Sheriff.

Attest:
JUSTUS L. JOHNSON, *Clerk.*

36062.

THOMAS P. KENNEY, Administrator of the Estate of Donald A. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Debt.

Now on this day comes the plaintiff herein by his attorneys and on his motion it is ordered by the Court that the time for said plaintiff to file an appeal bond herein be and the same is hereby extended twenty days from the date hereof.

46 Be it Remembered, That on, to-wit, the 16th day of February, A. D. 1918, an Appeal Bond was filed and approved in said Court, which said Appeal Bond is in the words and figures, as follows, to-wit:

Know all Men by these Presents, That we, Thomas P. Kenny, administrator of the estate of Donald A. Kenny, deceased, as principal, of the County of Jefferson, and State of Alabama, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Supreme Lodge of the World Loyal Order of Moose, a corporation, in the penal sum of Two Hundred Fifty Dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this 12th day of February, A. D. 1918.

The Condition of the above obligation is such, that whereas, the said Supreme Lodge of the World Loyal Order of Moose, a corporation, did on the 25th day of January, A. D. 1918, in the Circuit Court of Kane County, in the State of Illinois, and of the November Term, thereof, A. D. 1917, recover a judgment against the above bounden Thomas P. Kenny, administrator of the estate of Donald A. Kenny, deceased, for costs of suit; from which said judgment of the said Circuit Court of Kane County, the said Thomas P. Kenny, administrator of the estate of Donald A. Kenny deceased, has prayed for and obtained an appeal to the Supreme Court of said State;

47 Now, Therefore, if the said Thomas P. Kenny, administrator shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs, interest, and damages rendered, and to be rendered against him in case the said judg-

ment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

THOMAS P. KENNEY, *Admr.* [SEAL.]
UNITED STATES FIDELITY AND GUARANTY COMPANY,
By FRANK J. GAULTER, [SEAL.]
Attorney in Fact.
By HENRY M. MARSHALL, [SEAL.]
Attorney in Fact.

[CORPORATE SEAL.]

Approved,
JUSTUS L. JOHNSON, *Clerk.*

STATE OF ILLINOIS,
County of Cook, ss:

I, Fred C. Hachtel, a Notary Public in and for the County and State aforesaid, do hereby certify that Frank J. Gaulter and Henry M. Marshall, Attorneys in fact of the United States Fidelity and Guaranty Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such Attorneys in fact, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said United States Fidelity and Guaranty Company for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

Given under my hand and Notarial Seal this 12th day of February, A. D. 1918.

[NOTARIAL SEAL.] FRED C. HACHTEL,
Notary Public.

My Commission expires Sept. 27th, 1919.

Filed February 16th, A. D. 1918, Justus L. Johnson, Clerk.

48 STATE OF ILLINOIS,
County of Kane, ss:

I, Justus L. Johnson, Do Hereby Certify that I am the Clerk of the Circuit Court in and for the County of Kane and State of Illinois and that as such Clerk I am the Keeper and Custodian of the files and records of said Court and the seal thereof.

I Do Further Certify that the above and foregoing is a full, true and complete copy of All Pleadings and Instruments Filed and all Orders Entered of Record, in said Court, in a certain cause therein pending wherein Thomas P. Kenney, Administrator of the Estate of Donald A. Kenney, Deceased, was plaintiff and Supreme Lodge of the World Loyal Order of Moose, A Corporation, was defendant, General Number 36062.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Geneva, in said Kane County, Illinois, this 1st day of March, A. D. 1918.

[SEAL.] JUSTUS L. JOHNSON,
Clerk of the Circuit Court of Kane County, Illinois.

49 *Assignment of Errors.*

Now comes appellant Thomas P. Kenney, Administrator of the estate of Donald A. Kenney, deceased, by Blum, Wolfsohn & Blum and Raymond & Newhall, his attorneys, and says that in the record and proceedings, aforesaid, and in the rendition of the judgment, and in the entry of the order in said cause, there is manifest error in this, to-wit:

1. The trial court erred in overruling the demurrer of the plaintiff to the plea of the defendant.
2. The court erred in quashing the writ of summons in said cause.
3. That the said order overruling the demurrer of the said plaintiff to the said plea is against the law.
4. That the said order quashing the summons in said cause is against the law.

BLUM, WOLFSOHN & BLUM,
RAYMOND & NEWHALL,
Attorneys for Appellant.

50 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the First Day of October, in the Year of Our Lord One Thousand Nine Hundred and Eighteen, within and for the State of Illinois.

Present: Chief Justice Warren W. Duncan; Justice James H. Cartwright, Justice Orrin N. Carter, Justice George A. Cooke, Justice William M. Farmer, Justice Frank K. Dunn, Justice Clyde E. Stone; Edward J. Brundage, Attorney General; Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL, *Clerk.*

Be it remembered, that afterward, to-wit: on the 21st day of October, 1918, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 12112-13. Consolidated.

THOMAS P. KENNEY, Administrator of the Estate of Donald A. Kenney, Deceased, Appellant,

v.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, Appellee.

Appeal from Circuit Court, Kane County.

51 Ag. 69.

Supreme Court of Illinois, April Term, A. D. 1918.

Nos. 12112–12113.

THOMAS P. KENNEY, Administrator of the Estate of Donald A. Kenney, Deceased, Appellant,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, Appellee.

JOHN C. GUSTIN, Administrator of the Estate of Christopher Gustin, Decd., Appellant,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, Appellee.

Appeals from Circuit Court, Kane County.

Mr. Justice Cooke delivered the opinion of the Court:

Thomas P. Kenney, administrator of the estate of Donald A. Kenney, brought his action of debt in the circuit court of Kane county on a judgment obtained in the State of Alabama against Supreme Lodge of the World, Loyal Order of Moose. At the same time John C. Gustin, administrator of the estate of Christopher Gustin, brought a like suit in the same court against the same defendant. From the declarations it appears that suits were commenced in the City Court of Birmingham, Alabama, a court of general jurisdiction, and judgments were recovered respectively in the sum of $18,000 in the Kenney case and $15,000 in the Gustin case. A plea was filed in each case to the jurisdiction of the court, alleging that the deceased came to his death by injuries inflicted upon his person in the State of Alabama, and that the death occurred within the State of Alabama, and that the judgment upon

52 which suit was brought herein was for damages assessed for the negligent causing of the death. To this plea plaintiff demurred, and the demurrer being overruled plaintiff in each instance elected to stand by his demurrer, and judgment was rendered by the court. From this judgment plaintiff in each case appealed. The questions involved in both appeals are the same, and the causes have been consolidated.

Section 2 of our Injuries Act provides that no action shall be brought or prosecuted in this State to recover damages for a death occurring outside of this State. In Walton vs. Pryor, 276 Ill. 563, we held that the courts of this State had no jurisdiction of an action for damages occasioned by death occurring in another State in consequence of wrongful act, neglect or default. In Dougherty vs. American McKenna Process Co., 255 Ill. 369, we also held that the courts of this State were without jurisdiction to entertain such a cause of action, and that the jurisdictional provisions contained in the statute did not contravene the full faith and credit clause of the Federal Constitution or the provision of the Federal Constitution entitling the citizens of each State to all the privileges and immunities of citizens of the several States. The original action on which the judgments were obtained not being maintainable in Illinois, the question arises whether under the full faith and credit clause of the Federal Constitution the circuit court was concluded by the judgments of the Alabama court, or whether it could look behind the judgments to determine the nature of the causes of action upon which the judgments were based.

The full faith and credit clause of the Federal Constitution does not compel a State to give its courts jurisdiction against its will. (Anglo-American Provision Co. vs. Davis Provision Co. 191 U. S. 373.) In that case one Illinois corporation sued another Illinois corporation in the New York Supreme Court upon an Illinois judgment. The New York code provided that "an action
53 against a foreign corporation may be maintained by another foreign corporation or by a non-resident in one of the following cases only: * * * 3. Where the cause of action arose within the State." It was argued there that the State could not exclude a foreign corporation from suing upon judgments obtained in another State, because to do so was to deny full faith and credit to those judgments. In passing upon the question the court said: "The Constitution does not require the state of New York to give jurisdiction to the supreme court against its will. If the plaintiff can find a court into which it has a right to come, then the effect of the judgment is fixed by the Constitution and the act in pursuance of it which Congress has passed. Rev. Stat. sec. 905 (U. S. Comp. Stat. 1901, p. 677). But the Constitution does not require the state to provide such a court. See Missouri vs. Lewis, 101 U. S. 22, 30). If the State does provide a court to which its own citizens may resort in a certain class of cases, it may be that citizens of other states of the Union also would have a right to resort to it in cases of the same class." It follows from this holding that so long as a State does not discriminate between its own citizens and the citizens of other States,

it may limit the jurisdiction of its courts upon actions on judgments the same as it may do with relation to any other kind of action.

It now remains to be seen how far a court may go in determining whether or not it has jurisdiction in an action brought on a judgment. Where an action is brought upon a judgment rendered in another State the court may examine into the nature of the cause of action upon which the judgment is founded for the purpose of determining whether it would have had jurisdiction of the subject matter of the action, and if it appears that the court would not have had jurisdiction of the original action it will not have juris-
54 diction of the action on the judgment. (State of Wisconsin vs. Pelican Insurance Company of New Orleans, 127 U. S. 265.) In that case, which is the leading case in the United States on this question, an action was commenced in the United States Supreme Court upon a judgment obtained by the State of Wisconsin in a court of that State for a penalty for violation of the statutes of that State. The ground upon which the jurisdiction of the Supreme Court of the United States was invoked was that the plaintiff was one of the States of the Union and the defendant a corporation of another State. In determining that it was without jurisdiction the Supreme Court held that the provision of the constitution and the act of Congress by which the judgments of the courts of any State are to have such faith and credit given to them in every court within the United States as they have by law or usage in the State in which they were rendered establishes a rule of evidence rather than of jurisdiction, and said: "While they make the record of a judgment, rendered after due notice in one State, conclusive evidence in the courts of another State, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered in evidence. Judgments recovered in one State of the Union, when proved in the courts of another government, whether State or national, within the United States, differ from judgments recovered in a foreign country in no other respect than in not being reexaminable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties. (Hanley v. Donoghue, 116 U. S. 1.) * * * The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it; and the technical rules, which regard the original claim as merged in the judgment,
55 and the judgment as implying a promise by the defendant to pay it, do not preclude a court, to which judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim), from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it." The holding in that case was followed and approved in Anglo-American Provision Co. vs. Davis Provision Co. supra; Fauntleroy vs. Lum, 210 U. S. 230; Oklahoma ex rel. West vs. Gulf, Colorado & Santa Fe Ry. Co., 220 U. S. 290; Carpenter vs. Beal-McDonnell Co. 222 Fed. 453; Beal vs. Carpenter, 235 Fed., 273. These cases clearly distinguish between

a defense which is directed to the jurisdiction of the court in which suit is brought on a judgment and a defense which goes to the merits of the original action. While it could not be questioned that in a suit on a judgment a defense which is directed to the merits of the original action would be in violation of the full faith and credit clause of the constitution, it is equally clear that an inquiry for the purpose of merely determining the jurisdiction of the court in an action on the judgment makes no attack upon the judgment itself and does not question its binding force. Such an inquiry does not constitute a collateral attack upon the judgment.

Plaintiffs rely upon Fauntleroy vs. Lum, supra, and Beal vs. Carpenter, supra, in support of their contention that a judgment recovered in a court of another State is enforceable even though the cause of action upon which it is based would have been unenforceable in a court of this State. A careful analysis of these cases discloses that they have followed the holding in State of Wisconsin vs. Pelican Insurance Company of New Orleans, supra, and that
56 they do not support the contention of plaintiffs.

The legislature has seen fit to forbid recovery in this State for a death by wrongful act occurring without the State, and has deprived our courts of jurisdiction to entertain such a cause of action. Under the holding in the cases cited the circuit court properly held that it was without jurisdiction, and its judgment in each case is therefore affirmed.

Judgments affirmed.

57 And afterwards, to-wit, on the 17th day of April, A. D. 1918, the same being one of the days of the said April term of Court last aforesaid, the following proceedings were by said Court had and entered of record in the words and figures following, to-wit:

No. 12112.

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased, Appellant,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, Appellee.

Appeal Circuit Court Kane.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant, hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said

judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

58 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the First Day of October, in the Year of Our Lord One Thousand Nine Hundred and Eighteen, Within and for the State of Illinois.

Present: Chief Justice Warren W. Duncan; Justice James H. Cartwright, Justice Orrin N. Carter, Justice George A. Cooke, Justice William M. Farmer, Justice Frank K. Dunn, Justice Clyde E. Stone; Edward J. Brundage, Attorney General; Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it remembered that to-wit: On the 21st day of October A. D. 1918, the same being one of the days of the said October term of said Supreme Court, certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

October 21st, A. D. 1918.

No. 12112.

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased, Appellant,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, Appellee.

Appeal From Circuit Court of Kane County.

And now on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and now being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error:

Therefore, it is considered by the Court that the Judgment of the Circuit Court aforesaid, be affirmed in all things, and stand in full

force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellee recover of and from the said Appellant costs by it in this behalf expended, to be taxed in due course of law.

59 STATE OF ILLINOIS,
Supreme Court, ss:

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the above and foregoing to be a true copy of Complete Record from the Circuit Court of Kane County filed in my office in a certain cause entitled in this Court No. 12112, Thomas P. Kenney, Administrator of the estate of Donald E. Kenney, deceased, Appellant, vs. Supreme Lodge of the World, Loyal Order of Moose, a corporation, Appellee, Appeal Circuit Court Kane, filed in this office on the 13th day of March A. D. 1918, together with complete transcript of proceedings had in the Supreme Court of Illinois.

Witness my hand and Seal of said Supreme Court, at Springfield, in said State, this 26th day of December A. D. 1918.

[Seal of the Supreme Court of the State of Illinois.]

CHARLES W. VAIL, *Clerk.*

60 STATE OF ILLINOIS,
County of Sangamon, ss:

I, Warren W. Duncan, Chief Justice of the Supreme Court of the State of Illinois, do hereby certify that the attestation and certificate of Charles W. Vail to the foregoing and annexed Instrument of writing are in due form of law and that the said Charles W. Vail is and was at the time of making said certificate and attestation, the Clerk of the said Supreme Court of Illinois and the legal custodian of the papers, documents, records, and seal pertaining to said Court, and is, and at said time was, the proper officer to make such attestation and certificate and that his signature thereto is genuine.

In Testimony Whereof I have hereunto set my hand and caused to be affixed the seal of said Supreme Court, at the City of Springfield, in said County and State, this 26 day of December, A. D. 1918.

[SEAL.] WARREN W. DUNCAN,
Chief Justice, Supreme Court of Illinois.

STATE OF ILLINOIS,
Sangamon County, ss:

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois, do hereby certify that Warren W. Duncan, whose signature appears to the foregoing certificate is and was at the time of signing

said certificate the Chief Justice of said Court, duly commissioned and qualified in accordance with the laws of the State of Illinois.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, at Springfield, Illinois, this 26th day of December, A. D. 1918.

[SEAL.]

CHARLES W. VAIL,
Clerk Supreme Court of Illinois.

61 In the Supreme Court of the United States.

No. 803.

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Certiorari to the Supreme Court of Illinois.

In the Supreme Court of the United States.

No. 870.

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation.

Writ of Error to the Supreme Court of Illinois.

Stipulation of Attorneys.

Whereas, in one of the above styled causes, plaintiff in error sued out a writ of error from this Court, and in the other cause, prayed a certiorari from this Court, in both cases to review the judgment of the Supreme Court of Illinois, in the cause of Thomas P. Kenney, as Administrator of the estate of Donald E. Kenney, deceased, vs. Supreme Lodge of the World, Loyal Order of Moose;

It is stipulated and agreed between all the parties, viz: Supreme Lodge of the World, Loyal Order of Moose, by its attorney, E. J. Henning, and, Thomas P. Kenney, as Administrator of the estate of Donald E. Kenney, deceased, by his attorney, G. R. Harsh, that only one record need be printed, and that same may be used and taken as the record in both causes.

It is further agreed that the record certified by the Clerk of the Supreme Court of Illinois, as the record in said cause, and heretofore, towit, on the 13th day of January, 1919, filed by said Thomas P. Kenney, Administrator, with the Clerk of this Court, may be used and printed as the record in both of the above styled causes.

62 It is further stipulated and agreed between the parties to the above styled causes, that the printing of said record, and the filing of briefs and printing of same by either party, may be delayed for 60 days from this date.

Signed this 8 day of February, 1919.

G. R. HARSH,
Attorney for Plaintiff in Error and Petitioner for Certiorari.
E. J. HENNING,
Attorney for Defendant in Error and Defendant in Petition for Certiorari.

[Endorsed:] 803/26,889. 870/26,956.

63 [Endorsed:] File Nos. 26,889 and 26,956. Supreme Court U. S., October Term, 1918. Term Nos. 803 & 870. Thomas P. Kenney, Administrator, etc., vs. Supreme Lodge of the World, Loyal Order of Moose. Stipulation to Print One Record. Filed Feb. 20, 1919.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Being informed that there is now pending before you a suit in which Thomas P. Kenney, Administrator of the Estate of Donald E. Kenney, deceased, is appellant, and Supreme Lodge of the World, Loyal Order of Moose, is appellee, No. 12112, which suit was removed into the said Supreme Court by virtue of an appeal from the Circuit Court of Kane County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States,

Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirtieth day of April, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 26,889. Supreme Court of the United States, No. 803, October Term, 1918. Thomas P. Kenney, as Administrator, etc., vs. Supreme Lodge of the World, Loyal Order of Moose. Writ of Certiorari. Filed May 16, '19. Chas. W. Vail, Clerk Supreme Court.

In the Supreme Court of Illinois.

No. 12112.

THOS. P. KENNEY, Adm'r of the Estate of Donald E. Kenney, Deceased, Appellant,

vs.

THE SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, Appellee.

In the above styled cause it is stipulated and agreed by and between the parties thereto through their respective attorneys that the certified transcript of the Record in this cause which was made and certified to by the Clerk of this Court, and is now on file in the office of the Clerk of the Supreme Court of the United States, may and shall be taken as a full and complete return to the Writ of Certiorari, issued in the above styled cause to the judges of this Court on the

30th day of April, 1919; and further, that no other copy or certification of said record need be made, nor shall any other return to said Writ of Certiorari.

Witness our hands, this 3rd day of May, 1919.

G. R. HARSH,
Attorney for Appellant.
E. J. HENNING,
Attorney for Appellee.

STATE OF ILLINOIS,
Supreme Court, ss:

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the above and foregoing to be a true copy of A Stipulation filed with Writ of Certiorari in a certain cause entitled in The Supreme Court of the United States, Thomas P. Kenney, Administrator, etc. vs. Supreme Lodge of the World, Loyal Order of Moose, No. 803, October term, 1918, filed in this office on the 21st day of May, A. D. 1919.

I further certify that this certification is made as my return to the said Writ of Certiorari.

Witness my hand and Seal of said Supreme Court, at Springfield, in said State, this 21st day of May, A. D. 1919.

[Seal of the Supreme Court, State of Illinois, Aug. 28, 1818.]

CHAS. W. VAIL,
Clerk.

[Endorsed:] File No. 26,889. Supreme Court U. S. October Term, 1919. Term No. 269. Thomas P. Kennedy, as Administrator, etc., Petitioner, vs. Supreme Lodge of the World, Loyal Order of Moose. Writ of certiorari and return. Filed May 31, 1919.

Office Supreme Court, U. S.
FILED
JAN 13 1919
JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. [redacted]269

THOMAS P. KENNEY, as Administrator of the Estate of Donald E. Kenney, Deceased, Petitioner,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

G. R. HARSH,
Attorney for Petitioner.

(26,889)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 803.

THOMAS P. KENNEY, AS ADMINISTRATOR OF THE ESTATE OF DONALD E. KENNEY, DECEASED, PETITIONER,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, A CORPORATION, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

To the Honorable the Supreme Court of the United States:

The petition of Thomas P. Kenney, as administrator of the estate of Donald E. Kenney, deceased, respectfully shows to the court as follows:

This action was brought in the Circuit Court for the Sixteenth Circuit of Illinois, upon a judgment theretofore, to wit, on the 5th day of April, 1915, obtained by plaintiff

inating from the first the affirmance of said judgment of the Circuit Court of Illinois and substituting therefor a judgment reversing said judgment of the Circuit Court of Illinois, and by eliminating said judgment for defendant by the Circuit Court of Illinois and substituting therefor a judgment for the plaintiff for the amount of said judgment of the City Court of Birmingham, Alabama, together with interest thereon, and the costs of this cause, as shown by the record filed in this cause.

THOMAS P. KENNEY,
As Administrator of the Estate of
Donald E. Kenney, Deceased,
By G. R. HARSH,
Attorney for Petitioner.

STATE OF ALABAMA,
County of Jefferson, ss:

G. R. Harsh, being duly sworn, says that he is counsel for Thomas P. Kenney, administrator of the estate of Donald E. Kenney, deceased, the petitioner; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

G. R. HARSH.

Sworn to and subscribed before me this 11th day of January, A. D. 1919.

[SEAL.] MARGARET GAYLE,
Notary Public.

My commission expires June, 1922.

Office Supreme Court, U. S.
FILED
APR 17 1919
JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased,
Petitioner,
vs.
SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation,
Respondent.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS.
No. 803. 269

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased,
Plaintiff in Error,
vs.
SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation,
Defendant in Error.

WRIT OF ERROR TO SUPREME COURT OF ILLINOIS.
No. [redacted]303

BRIEF FOR PETITIONER AND PLAINTIFF IN ERROR IN ABOVE CAUSES.

G. R. HARSH,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased, *Petitioner*, vs. SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, *Respondent.*	CERTIORARI TO THE SUPREME COURT OF ILLINOIS. No. 803.
THOMAS P. KENNEY, Administrator of the Estate of Donald E. Kenney, Deceased, *Plaintiff in Error*, vs. SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, a Corporation, *Defendant in Error.*	WRIT OF ERROR TO SUPREME COURT OF ILLINOIS. No. 870.

BRIEF FOR PETITIONER AND PLAINTIFF IN ERROR IN ABOVE CAUSES.

STATEMENT OF CASES.

Thomas P. Kenney, as Administrator, on January 13, 1919, filed with the Clerk of this Court his petition for certiorari to the Supreme Court of Illinois, and made a part of that petition, a transcript of the record in that

Court, which included the proceedings in the trial court which had been certified to the Supreme Court, and which transcript was duly certified by the Clerk of the Supreme Court of Illinois.

On January 20, 1919, Mr. Kenney, as Administrator, as aforesaid, filed his petition for writ of error, and Associate Justice Clarke, of this Court, on the same day, ordered the issuance of the writ. On the 21st day of January bond was made and approved, and the writ issued.

As is apparent, the two remedies were sought solely because of uncertainty on our part as to the proper remedy, there being, in fact, but one case.

Counsel have stipulated that only one record shall be printed and the two causes considered together, so we presume this Court will pass upon the merits without regard to form.

The original suit was begun in the City Court of Birmingham, Alabama, a court of general jurisdiction, for damages for the death of plaintiff's intestate, alleged to have been caused by the negligence of defendant (among others) while intestate was being initiated in the "Loyal Order of Moose."

Alabama had early adopted "Lord Campbell's Act," and same constitutes the only act of general application for the recovery of damages for the death of a human being, and this suit was brought under that act. While the Supreme Court of Alabama holds that the damages are punitive, same do not constitute a penalty for the commission of any public or statutory offense, but are private damages recoverable by the personal representative of a decedent, distributable to his next of kin.

Defendent (respondent and defendant in error here) contested the case in the trial court and appealed to the Supreme Court of Alabama from the judgment rendered

by the trial court on the verdict of the jury. The judgment of the trial court was affirmed with interest, damages and costs. Defendant, having no property in Alabama subject to levy, plaintiff sued on his judgment in the Circuit Court for the Sixteenth Circuit of the State of Illinois, which was a court of general jurisdiction. In that Court defendant filed the general issue and a special plea setting up that the judgment sued on was obtained on a cause of action for the death of a person occurring outside the State of Illinois.

To this special plea plaintiff demurred, raising two Federal constitutional questions, viz:

1. That the plea would deny to plaintiff's judgment, obtained in a sister state, the full faith and credit to which it was entitled under Section 1, Article IV, of the United States Constitution.

2. That it would violate Section 2, Article IV, of the Federal Constitution.

Defendant relied on Section 2 of the "Injuries Act" of Illinois, providing that "No action shall be brought or prosecuted in this State to recover damages for a death occurring outside of this State."

The Court overruled plaintiff's demurrers and the truth of the special plea being confessed, judgment thereupon went against plaintiff. From this judgment plaintiff appealed to the Supreme Court of Illinois, which Court affirmed the judgment of the lower court, holding that neither Section 1 or 2 of Article IV of the Federal Constitution were violated.

BRIEF AND ARGUMENT

While we insist upon our point under Section 2, Article IV, of the Constitution, the question which we wish to

stress is, did the action of the Illinois courts deny to plaintiff's judgment, obtained, as it was, in a court of competent jurisdiction after personal appearance of defendant, that full faith and credit to which it was entitled under Section 1, Article IV, of the Federal Constitution.

At least on the surface the denial of full faith and credit is so patent that any logical mind would want to hear first from those contending that there was no such denial. We have heard their contentions, and we believe their points are about these:

1. That the effect of Section 1, Article IV, on a judgment of a sister state, is solely evidential and that it has no field of operation until the judgment is offered in evidence.

In a sense, this section of the Constitution may have effect upon the judgment of a sister state merely as evidence, but it is in a most limited sense.

This Court holds that a judgment of a sister state must be given the same effect it has in the state where rendered.

> *Christmas vs. Russell*, 18 Law Ed. 475; 5 Wall 290; 11 U. S. Comp. Sat. (1916), p. 14175, note 58, citing many authorities.

As the Supreme Court of West Virginia put it, "It is a question of constitutional obligation, not of state policy, whether our courts will enforce a judgment of another state court of competent jurisdiction having jurisdiction in the cause."

> *Stewart vs. Stewart*, 27 W. Va. 167.

There is something more, therefore, than a mere matter of evidence in this virile provision of the Constitution. It is a mandate to every state that they must enforce the judgments of sister states by rendering judgment thereon

in a proper proceeding, putting into the new judgment the same effect which the old had in the state where it was rendered.

Defendants made no attack upon the jurisdiction of the City Court of Birmingham (Alabama) either as to the person or subject matter.

At least a prima facie presumption of such jurisdiction arises from the record in this cause.

11 U. S. Comp. Stat. (1916) p. 14146, note 32.

2. Defendant did contend in the Illinois courts that the judgment against it in the City Court of Birmingham (Alabama) and affirmed by the Supreme Court of Alabama on defendant's appeal was not really the *cause of action* being sued on in the courts of Illinois, but that the real cause of action was "brought or prosecuted in this State to recover damages for a death occurring outside of this State" in violation of the Illinois Injuries Act.

In this we think defendant was mistaken.

> "If there be any one principle of law settled beyond all question, it is this, that whenever a cause of action, in the language of the law, 'transit in rem judicatum,' and the judgment thereupon remains in full force unreversed, the original cause of action is merged and gone forever."

Note 1, 61 Law Ed. 1129;
15 R. C. L. 782;
Fletcher vs. Brown, 55 Law Ed. 609; 182 Fed. 963.

Kenney, therefore, did not sue in Illinois for a death occurring outside of that State. He sued upon a judgment rendered by a court of a sister state of competent jurisdiction and which had jurisdiction of the person and subject

matter and which judgment was affirmed by the highest tribunal of that State. The Illinois statute did not relate to or affect in any way the *cause of action* sued on in the Illinois courts.

The opposite conclusion would nullify the constitutional provision in question. If Illinois could pass a law *having the effect contended for*, then any state could put this statute on its books, viz: "No action shall be brought or prosecuted in this State on any judgment obtained on any cause of action whatsoever, occurring outside this State," and such law would effectually prevent *any judgment whatsoever of any sister state* from being sued on in the courts of another state.

The courts of Illinois mistook the *cause of action* before them, doubtless without an appreciation of the logical effect of their decision.

Kansas tried in a limited way by statute to prevent actions in the courts of Kansas on judgments of sister states where the causes of action would have been barred by the limitation laws of Kansas.

The Supreme Court of Kansas, however, held that this attempt of the legislature violated the full faith and credit clause of the United States Constitution, and was, therefore, void.

Dodge vs. Coffin, 15 Kan. 277.

Mississippi, too, tried this same kind of statute. It read:

> "No action shall be maintained on any judgment or decree rendered by any court without this State against any person who, at the time of the commencement of the action in which such judgment or decree was or shall be rendered, was or shall be a resident

of this State, in any case where the cause of action would have been barred by acts of limitation of this State, if such suit had been brought therein."

A judgment had been obtained in Kentucky contrary to this statute and suit brought in Mississippi on that judgment. Defendant plead the facts bringing the case within the Mississippi statute. This court said:

> "Applying these rules to the present case, it is clear that the statute which is the foundation of the second plea in this case is unconstitutional and void as affecting the right of the plaintiff to enforce the judgment mentioned in the declaration. Beyond all doubt the judgment was valid in Kentucky and conclusive between the parties in all her tribunals, * * * and if so, it is not competent for any other state to authorize its courts to open the merits and review the cause, much less to enact that such a judgment shall not receive the same faith and credit that by law it had in the state courts from which it was taken."

Christmas vs. Russell, 18 Law Ed. 475.

The above as well as other general statements of the law in line therewith were approved by this Court in

Fauntleroy vs. Lum, 52 Law Ed., p. 1042.

In that case, too, the "Pelican" case, so much relied on by defendant, was explained and some of its expressions held to be dicta.

The general truth that the cause of action sued on is merged in the judgment rendered can not be taken advantage of under Section 1, Article IV, of the Federal Constitution, to enforce the *criminal laws* of one state in another.

There is woven into the warp and woof of the law, at

least of English-speaking peoples, the principal that criminal laws, including criminal pecuniary penalties, can only be enforced in the jurisdiction where the offense was committed, to such an extent that this Court concluded that such offense could not have its penalty enforced elsewhere than where the offense was committed, even through the full faith and credit clause of the Constitution. This clause must be interpreted in the light of the universal understanding on this subject existing at the time of the adoption of the Constitution.

Accordingly this Court held in *State of Wisconsin vs. Pelican Ins. Co. of N. O.*, 127 U. S. 265, that

> "The technical rules, which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court, to which a judgment is presented for affirmative action * * * from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it."

The Supreme Court of Illinois seized upon the above language as its principal justification for declining to enforce the full faith and credit clause of the Constitution. It seems to us with all due respect that *that* court wholly misunderstood *this* court.

The full faith and credit clause was in no way involved in the case above quoted from. (Let us call it the Pelican case for convenience.) The only question was whether the *original* jurisdiction of this court could be invoked in the cause presented. This court is not a court of general original jurisdiction, and while it was concluded by this court that the constitutional words conferring original jurisdiction were, in form, broad enough to cover the case, yet by reason of the general law in England and in

this country that "The Courts of no country execute the penal laws of another," it was held by this court that jurisdiction was not conferred upon it to enforce penalties. The court had ascertained that "The cause of action was not any private injury, but solely the offense committed against the state by violating her law. The prosecution was in the name of the state, and the whole penalty, when recovered, would accrue to the state."

The Supreme Court of Illinois, in its opinion copied in the record in this cause, concludes that, "And if it appears that the court would not have had jurisdiction of the original action it will not have jurisdiction of the action on the judgment." This conclusion the court attempts to rest on the "Pelican" case. Such was not the rule laid down in that case. In fact that case "established" no rule, but reiterated the time-honored doctrine that no court would enforce the penal laws of another jurisdiction. The suggestion that a court had the right to look into the cause of action on which a judgment was had to see whether or not the court had authority to enforce the judgment must be limited by the above considerations. The language upon which the contention is based was used in reference to a claim and judgment for a criminal penalty which it was the policy of the law of this country and of England when the Constitution was formed not to enforce in any jurisdiction other than where the crime was committed. This court interpreted the Constitution in the light of existing law, as all courts do, and had no intention of robbing the constitutional provision in question of its force.

We have no idea that the Legislature of Illinois in framing its "Injuries Act" ever had any purpose to prevent actions in Illinois on *judgments* rendered in sister states. The evil intended to be destroyed was, doubtless, a custom of burdening the Illinois courts with original litigation the

cause of which arose elsewhere, and not to furnish a "City of Refuge" for fleeing judgment debtors whose property had all been safely hidden within the confines of Illinois. Doubtless the jobbers of fraudulent stocks and their ilk would welcome Illinois as a storage house for their ill-gotten gains if this court should affirm the judgment of the Supreme Court of Illinois.

Alabama had just such a statute as Illinois and nobody ever thought any such effect as now contended for attended it.

We think this court has itself effectually answered the position of the Supreme Court of Illinois in the case of

Fauntleroy vs. Lum, 210 U. S. 230;
Beal vs. Carpenter, 235 Fed. 273.

We think these cases also answer the last contention of defendant in the courts of Illinois which is really but another form of what has already been discussed. The position is, viz:

3. That the interpretation of the statute of Illinois is for the courts of Illinois and that if they determine that the Illinois courts have no jurisdiction then this court is helpless.

Our answer is that the interpretation of Illinois statutes is for the courts of Illinois, but if so interpreted (which is then their true meanings) they deny a right guaranteed by the Constitution of the United States as *interpreted by the courts of the United States*, then they must be held invalid.

Crew Levick Co. vs. Commonwealth of Pa., 62 Law Ed. 295.

It is not pretended by the Supreme Court of Illinois that the Circuit Court of that State is not a court of general jurisdiction nor that it has not jurisdiction to try and determine all questions of law and of fact which any court of the State could try and determine, nor that the subject matter of the cause of action is criminal or of such other nature that at the time of the adoption of the Constitution the courts of a state other than where it arose would not enforce it as in the case of Pelican Ins. Co. vs. Wisconsin.

It is not pretended that plaintiff is such an entity as the State of Illinois would have the right to exclude from its courts, as in the case of plaintiff in Anglo-American Provision Co. vs. Davis Provision Co. et als, 48 Law Ed. 228 (plaintiff there being a foreign corporation). The only contention is that because an Illinois statute provided that "No action shall be brought or prosecuted in this State to recover damages for a death occurring outside of this State," all the courts of Illinois were without jurisdiction of a suit on a judgment rendered by a court of competent jurisdiction in a state where the death *did occur*.

This court said in the case of *Rogers vs. State of Alabama*, 48 Law Ed. 417, decided after the *Anglo-American Pro. Co. vs. Davis Pro. Co.*, so much insisted on, as follows, viz:

> "There can be no doubt that if full faith and credit were denied to a judgment rendered in another state upon a suggestion of want of jurisdiction, without evidence to warrant the finding, this court would enforce the constitutional requirement."

Of course it would. It is unthinkable that this court would permit the plain meaning of Section 1, Article IV, of the Constitution and of the congressional legislation thereunder to be destroyed by a mere trick use of the word

"jurisdiction" or of any trick of thought suggested by that word. Nullification of the Constitution was attempted by South Carolina and Andrew Jackson destroyed it as he would have done a poisonous reptile striking at the vitals of the American form of government, and this court would strike down nullification of this particular provision with its dependent congressional action as quickly as if the Constitution destroyer were aimed at any other provision. It has done so in many cases cited in

Note 58 in 11 U. S. Comp. Sta., p. 14175.

Respondent, defendant in error, seems to think that *Anglo-American Provision Co. vs. Davis Provision Co.*, 48 Law Ed. 225, is decisive that a state legislature can, at will, by the use of the word "jurisdiction" nullify this constitutional provision. We do not think so. We think the result announced in that case depended upon the consideration that at the time the Constitution was adopted it was the universal law not only as between foreign countries and the states, but as between the states themselves, that no state was forced to admit to its courts, nor indeed to its territory, any foreign corporation. The Constitution was adopted in this "atmosphere of the law" and the rule that its interpretation must recognize that fact naturally followed. This principle is illustrated in the interpretation of other clauses of the Constitution of the United States and of the several states. For instance, the Constitution of Alabama provides that the right of trial by jury shall forever remain inviolate, and yet there are many cases where parties both in civil and criminal cases can have no jury. The reason for this interpretation is obvious, but no more obvious than was the interpretation of Section 1, Article IV, in the "Provision" case referred to, viz: that the Constitution is to be interpreted in the light of the day when it

was adopted, and therefore that New York was not bound to open its courts to a foreign corporation. It is not difficult to tell when an innovation was intended and when existing rights merely were preserved.

In *General Oil Co. vs. Crain*, 52 Law Ed. 763, this court, speaking long after the "Provision case," said:

> "If a suit against state officers * * * may be forbidden by a state to its courts, as is contended in the case at bar that it may be, without power of review by this court, it must be evident that an easy way is open to prevent the enforcement of many provisions of the constitution; and the 14th amendment, which is directed at state action, could be nullified as to much of its operation. And it will not do to say that the argument is drawn from extremes. Constitutional provisions are based on the possibility of extremes."

In that case the Supreme Court of Tennessee had held, in the judgment involved, that a statute of the State of Tennessee expressly deprived any of its courts of jurisdiction.

Fauntleroy vs. Lum, 52 Law Ed. 1039, was another case in which a state court had attempted to take advantage of its own state statute which *it interpreted* as denying jurisdiction to its state courts of a judgment rendered in a sister state. This court reversed the decision of the Supreme Court of Mississippi notwithstanding the judgment sued on was one which enforced liability for an act done in Mississippi and which was violative of its public policy. True four of the justices dissented, but the grounds of their dissent fortify rather than weaken our theory of this case. They are: That under the general law prevailing at the adoption of the Constitution no state was bound to enforce judgments of another state which were contrary to

its own public policy; and that the judgment sued on was for an act occurring in Mississippi which was illegal and prohibited in that State. (Page 1044.) We are not concerned in the case at bar with the difference of opinion among the justices of this court on this question, for it is not here involved.

The death in the case at bar occurred in Alabama. The wrong was done there. Nobody can say that it is against the public policy of Illinois, or that its laws prohibit, the recovery by an administrator in Alabama for the death of a human being wrongfully caused in Alabama. The most that can be said is that Illinois did not want the burden of litigation to establish the wrong and the amount of damages. This was not attempted, but the courts of Alabama carried this burden and all that was asked of Illinois was to "Give full faith and credit" to this judgment obtained in a court which had jurisdiction of the person and subject matter; to give it "the same effect it had in the state where rendered." This was refused on the (to us seemingly) groundless pretext that the court of Illinois of general jurisdiction had no jurisdiction of this judgment.

Our own opinion is, and we think the effect of the decisions of this court is, that a state may deprive its courts, even those of *general jurisdiction*, of jurisdiction of certain matters, but not when by so doing they would deprive persons of the power to enforce rights under the Constitution and laws of the United States, one of which is to have judgment in any state upon judgments rendered by the courts of a sister state having jurisdiction of the person and subject matter, with the exception that they are not required to enforce judgments involving subject matter (such as criminal penalties, etc.) and in favor of persons (such as foreign corporations) which at the time of the

adoption of the Constitution it was well understood the different states would not enforce for each other.

Nothing in *Fauntleroy vs. Lum*, 52 Law Ed. 1041, can be taken to mean that a state has the arbitrary power merely because it will to refuse to enforce judgments of a sister state, however plainly such legislative will may be expressed or however strongly the Supreme Court of the state may so interpret the legislative act. The case cites and approves cases to the contrary, though some of the language used might be so interpreted.

On page 1041 this court, in that case, said:

> "When it affects a court of general jurisdiction and deals with a matter upon which that court must pass, we naturally are slow to read ambiguous words as meaning to leave the judgment open to dispute, or as intended to do more than to fix the rule by which the court should decide."

As this court in that case considered the question of jurisdiction on two entirely different grounds, first, whether the statute of Mississippi really meant to deprive its courts of jurisdiction (the question it was discussing when this and preceding language was used), and,

Second, "Whether the illegality of the original cause of action in Mississippi can be relied upon there as a ground for denying jurisdiction of a judgment of another state," and, as both of the questions were decided adversely to the right of Mississippi courts to refuse jurisdiction and each was treated as sufficient in itself, we must conclude that the range of the argument under the first ground extended no further than the ground itself. In other words, the court decided—

1. That the Mississippi statute (notwtihstanding the decision of the Supreme Court of Missippi to the contrary)

did not intend to deny jurisdiction, but only to establish a rule of decision.

2. That (under the doctrine laid down by Chief Justice Marshall approved in this case) if Mississippi had attempted to authorize its courts to go behind the judgment and refuse jurisdiction, that it could not do so merely because of the fact that the judgment was based on subject matter illegal under the laws of Mississippi and contrary to its public policy.

The above considerations seem to me to be conclusive that the Supreme Court of Illinois violated Section 1, Article IV, of the United States Constitution and the statutes based thereon.

Respectfully submitted,

G. R. HARSH,
Attorney for Petitioner and Plaintiff in Error.

BEDDOW & OBERDORFER,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 803.

THOMAS P. KENNEY, ADMINISTRATOR OF THE ESTATE OF DONALD A. KENNEY, DECEASED, PETITIONER,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

RESPONDENT'S BRIEF.

Statement of Facts.

The petitioner herein has not served any brief on respondent, and respondent is in ignorance as to whether or not he filed one.

The petition for a writ of certiorari submitted to this honorable court, filed on the 13th day of January, 1919, prayed for the issuance of a writ of certiorari to the Supreme Court of the State of Illinois, to bring up for review a certain

judgment entered in that court, which became final on the 21st day of October, 1918. The matters litigated in the State of Illinois arose in an action brought in Circuit Court for the Sixteenth District of Illinois upon a judgment recovered in the City Court of Birmingham, State of Alabama, by Thomas P. Kenney, as administrator of the estate of Donald A. Kenney, deceased, petitioner herein, against the Supreme Lodge of the World, Loyal Order of Moose, a corporation, respondent herein, for damages suffered by reason of the death of the petitioner's intestate, through negligence, which negligence and death occurred in the State of Alabama.

In the action brought in the Circuit Court for the Sixteenth District of the State of Illinois, the respondent herein pleaded to the jurisdiction of said court to hear the subject-matter of the cause of action, under the statutes of the State of Illinois, denying jurisdiction to the court upon claim for death by negligence when the death occurred outside of the State of Illinois. The Circuit Court sustained the plea and held it had no jurisdiction, and entered judgment for respondent herein. An appeal was taken therefrom to the Supreme Court of the State of Illinois, which affirmed the judgment. This record is now sought to be brought before this court for review by the petition filed for writ of certiorari.

Points and Authorities.

We respectfully suggest that petition for the writ should be dismissed and the writ denied, because:

First. The court is without jurisdiction in the matter, in that the petition for the writ was not filed and submitted within the time limited by law and rules of this court.

Section 237 of the Judicial Code as amended, September 16, 1916, section 6.

Rules of the United States Supreme Court; rule 37, section 4.

Second. The petition contains no statement of the general reasons relied on for the allowance of the writ.

Rules of the United States Supreme Court; rule 37, section 3.

Third. The record and the petition filed herein disclose that the decision of the Supreme Court of Illinois is based entirely upon the question of jurisdiction of its courts, which is not a Federal question.

N. P. R. R. *vs.* Ellis, 144 U. S., 458.
N. Y. C. R. R. *vs.* New York, 186 U. S., 269.
Turner *vs.* Wilkes County, 173 U. S., 461.
Standard Oil *vs.* Missouri, 224 U. S., 270.
General Oil Co. *vs.* Crain, 209 U. S., 211.
St. Louis Co. *vs.* Taylor, 210 U. S., 281.
Finney *vs.* Guy, 189 U. S., 335.
Chambers *vs.* B. & O., 207 U. S., 142.
Maiorano *vs.* B. & O., 213 U. S., 268.

Fourth. The full faith and credit clause of the Federal Constitution does not compel a State to give its court jurisdiction against its will.

Anglo-American Provision Co. *vs.* Davis Provision Co., 191 U. S., 273.

Fifth. The decision of a State court that the facts upon which the plaintiff relies to bring his cause within the provisions of the Constitution, do not exist, is not a denial of the constitutional right.

Crary *vs.* Deolin, 154 U. S., 619.
Mining Co. *vs.* Boggs, 3 Wall., 304.

Sixth. When the State court decides the matter on a point of general law broad enough to sustain the judgment, this court will not consider a Federal question that might have been involved.

Gaar Scott *vs.* Thomas, 223 U. S., 46.

ARGUMENT.

The Statutory Time Within Which Application for Certiorari Must Be Presented and Submitted Having Expired the Court Has No Jurisdiction to Grant the Writ.

Failure of petitioner to file a brief and the omission from the petition of the reasons relied on for the allowance of the writ places respondent in a dilemma, wherein he must choose either to impose upon the court's patience with a lengthy review of the decisions upon all possible reasons that could be raised or to submit his case on the record and rely upon the enforcement of the rules of court as grounds for the dismissal of the petition. Counsel has adopted the latter course and invading the former only so far as to show that no Federal question was passed upon by the State court.

The decision sought to be reviewed became final on October 21, 1918; the petition for writ of certiorari was filed with the clerk of the court on January 13, 1919; the printed record and petition were not filed until some sixty days later, and no brief was ever served upon respondent. Counsel contends that the time during which a writ of certiorari could be allowed had expired prior to the completion of the application therefor. Section 237 of the Judicial Code as amended provides:

> "No writ of certiorari * * * shall be allowed or entertained unless duly applied for within three months after the entry of the judgment or decree complained of."

Rule 37, section 4, provides that the application for writ of certiorari

> "will be deemed in time when the petition therefore accompanied by the printed record and brief is filed within the period prescribed by law, provided this is followed by submitting the petition in open court upon some motion day not later than the first one which follows a period of four weeks after such filing."

Petitioner did not, within three months after entry of the judgment complained of, file the printed record and brief or any brief at all. The four weeks' extension provided for by the court rule expired February 10, 1919; the first motion day subsequent thereto was March 3, 1919. Counsel contends this was the last day for submitting the petition, if the printed record and brief had been filed on January 13, 1919, and the court have jurisdiction to allow the writ under the Judiciary Act. No attempt was made to submit the petition on that date. On the 12th day of March, 1919, in a letter mailed at Birmingham, Alabama, and addressed to E. J. Henning, attorney for the respondent, at San Diego, California, petitioner forwarded notice that he would submit the petition on April 21, 1919.

It is contended that the statutory limitation upon the time in which applications for writ of certiorari may be made is jurisdictional and mandatory. The petition must be submitted to the court within this period; filing with the clerk is insufficient to satisfy the statute. The extension of time provided for in section 4, rule 37, is granted only when the conditions therein imposed are actually complied with, to wit, the filing of printed record and brief within the three months, and submitting the matter in open court on the first motion day after the expiration of four weeks after the filing thereof. The petitioner did not submit his petition to the court within three months after the entry of the judgment, and he has not complied with the provisions of the rule of court so as to be entitled to the extension of time therein granted. In fact, he neither filed a printed record and brief within the three months, nor has he submitted the matter to the court upon the first motion day after the expiration of four weeks from the time his application was filed with the clerk.

Respondent therefore respectfully contends that the writ should be denied on the grounds that it has not been presented timely.

The Petition States No Reason Why the Writ Ought to be Allowed and Specifies No Error of the State Court Invoking to a Federal Question.

The petition does not comply with section 3, rule 37, in that it fails to contain "the general reasons relied on for the allowance of the writ." This provision by the rule is made mandatory. The petition states no reason why the writ should or ought to be allowed. The petition alleges petitioner sued in the Circuit Court of Illinois, on a judgment recovered for damages sustained by reason of the death of his intestate, through the negligence of defendant. Respondent interposed a plea that the action was to recover damages for negligence and death occurring in the State of Alabama, and the courts of Illinois had no jurisdiction to hear and determine the same. The petitioner demurred to the plea as not sufficient in law by reason of the provisions of section 1 of Article IV of the Constitution of the United States; the Circuit Court overruled the demurrers and the Supreme Court sustained the judgment. Petitioner alleges "the said opinion and judgment shows that the affirmance was had upon the theory that section 1, Article IV of the Constitution was not violated in or by the said judgment of the said Circuit Court of Illinois." Petitioner further alleges that he "is advised that the said Supreme Court of Illinois was in error." It is respectfully contended that the petition contains no reasons whatsoever sufficient to warrant the allowance of a writ of certiorari.

The State Court Based Its Decision upon the Question of Its Own Jurisdiction and Not upon Any Federal Question.

The point involved and the basis of the court decision is clearly and concisely stated in the opinion as follows:

> "The legislature has seen fit to forbid recovery in this State for a death by wrongful act occurring with-

out the State, and has deprived our courts of jurisdiction to entertain such cause of action. Under the holdings in the cases cited the circuit court properly held that it was without jurisdiction and its judgment in each case is therefore affirmed."

Trans. of Record, pp. 35-38.

The power of the circuit court to hear and determine the subject-matter was raised by respondent and the court decided it was without jurisdiction. Such determination involved only the construction and application of the Constitution and Statutes of Illinois creating and empowering the court, and invoked no Federal question.

The decision of a State court upon its jurisdictional power to hear and decide a matter raises no Federal question.

N. P. R. R. *vs.* Ellis, 144 U. S., 458.

N. Y. C. R. R. *vs.* New York, 186 U. S., 269.

Even though the Illinois court was in error in determining the jurisdiction of the inferior tribunal, this affords no ground for review in the United States Supreme Court.

"This court is bound by the decisions of the State court in regard to the meaning of the Constitution and laws of the State and its decisions upon such statement of fact raise no Federal question."

Turner *vs.* Wilkes County, 173 U. S., 461-463.

"But it is equally well settled that it is for the supreme court of a State finally to determine its own jurisdiction and that of other local tribunals, since the decision involves a construction of the laws of the State, by which the court was organized. In this case the Constitution of Missouri declared that 'the Supreme Court shall have power to issue writs of *habeas corpus, quo warranto, certiorari,* and other remedial writs, and to hear and determine the same.' Its decision and judgment necessarily imply that under the clause of the Constitution it had jurisdiction of the subject-matter and authority to enter judgment in ouster and fine in civil *quo warranto* pro-

ceedings. That ruling is conclusive upon us regardless of whether the judgment is civil or criminal or both combined. Standard Oil Co. *vs.* Tennessee, 217 U. S., 54; L. Ed., 30 Sup. Ct. Rep., 543."

Standard Oil Co. *vs.* Missouri *ex rel.* Hadley, 224 U. S., 270-280.

"The State policy decides whether and to what extent the State will entertain in its courts transitory actions, which causes of action have arisen in other jurisdictions."

General Oil Co. *vs.* Crain, 209 U. S., 211-224.

"Each State may, subject to the restriction of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them, and especially how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside of its borders."

St. Louis *vs.* Taylor, 210 U. S., 281.

The petitioner's right to sue in Illinois on a cause of action arising in Alabama is a question entirely for the courts of Illinois to decide.

"Whether a State court should have permitted an action to be maintained, because of the principle of comity between the States, is a question exclusively for the courts of the State to decide. The right to maintain it under the facts of this case is not founded upon a provision of a Federal nature, and the court can not supervise the action of an Illinois court in this particular."

Finney *vs.* Guy, 189 U. S., 335-345.

Where plaintiff has not been denied access to the courts, because he is not a citizen of the State, but because the cause of action which he presents is not cognizable in these courts, he is not deprived of a constitutional right or privilege.

Chamber *vs.* B. & O., 207 U. S., 142.

Maiorano *vs.* B. & O., 213 U. S., 268.

The above authorities clearly and decisively hold that the State court has the right to determine and define its own jurisdiction, and its decisions thereon are conclusive upon this court. In case at bar this court must accept as a fact that the Circuit Court of Illinois was without jurisdiction to hear and determine a cause of action founded upon negligence and death occurring outside of Illinois.

The Full-faith-and-credit Clause of the Federal Constitution in Nowise Enlarges the Jurisdictional Powers of a State Court.

> "The-full-faith-and-credit clause of the Federal Constitution does not compel a State to give its courts jurisdiction against its will."
>
> Anglo-American Provision Co. *vs.* Davis Provision Co., 191 U. S., 273.

The petitioner's judgment was not denied full faith and credit in the State of Illinois, nor does the petition allege it has been. The allegation is that the Supreme Court held the judgment of the court below did not violate the full-faith-and-credit clause of the Constitution. The full-faith-and-credit clause is evidentiary and not jurisdictional. The case in the Illinois court had never proceeded to the stage wherein the question of the faith and credit of the Alabama judgment became involved. The plea raised the question of the jurisdiction of the court to hear and determine the subject-matter presented by petitioner and not to the character and weight of the testimony petitioner intended to rely upon as proof of his cause; the Illinois court passed on the single point, its authority to hear and determine the case presented and decided that its legislature had deprived it of jurisdiction so to do. As stated by this court in American Provision Co. *vs.* Davis Co., *supra*, if the petitioner can find a court in the State of Illinois with jurisdiction to hear and determine the subject-matter of his cause of action, respond-

ent makes no contention, that the judgment recovered in Alabama under the constitutional provision would not be conclusive proof of his right to recover, but that until application was made by petitioner to a court possessing such jurisdictional power he is not denied a constitutional right of having his judgment admitted as conclusive proof of his right to recover.

The decision of the Illinois court amounts to a holding that the facts upon which petitioner relies to entitle him to have full faith and credit given to the Alabama judgment do not exist; to wit, a court of competent jurisdiction to hear and determine the subject-matter of his cause of action.

> "Where the decision of the State court holding that the facts upon which plaintiff in error relies to bring their cause within the right claim did not exist it does not deny the right, but the existence of the facts necessary to bring the case within its operation, and this court has no jurisdiction to reverse it."
>
> Crary *vs.* Deolin, 154 U. S., 619.
> Mining Co. *vs.* Boggs, 3 Wal., 304.

There is another rule applied by this court in determining whether the judgment of a State court will be reviewed which precludes petition in case at bar.

> "Where a State court has decided against the plaintiff in error on a matter of general law broad enough to sustain the judgment, this court will not consider the Federal question even though it has been actually considered and determined adversely to his contention."
>
> Gaar, Scott *vs.* Thomas, 223 U. S., 46.

Wherefore, respondent contends that the writ should be denied, because not timely submitted, and further because no Federal question was involved or decided in the proceedings,

had in the State court or presented to this court by the record.

All of which is respectfully submitted.

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Office Supreme Court, U. S.
FILED
MAR 11 1920
JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 269.

THOMAS P. KENNEY, ADMINISTRATOR OF THE ESTATE OF DONALD E. KENNEY, DECEASED, PETITIONER,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, A CORPORATION, RESPONDENT.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

No. 303.

THOMAS P. KENNEY, ADMINISTRATOR OF THE ESTATE OF DONALD E. KENNEY, DECEASED, PLAINTIFF IN ERROR,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, A CORPORATION, DEFENDANT IN ERROR.

WRIT OF ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT AND DEFENDANT IN ERROR.

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THOMAS P. KENNEY, ADMINISTRATOR OF THE ESTATE OF DONALD E. KENNEY, DECEASED, PLAINTIFF IN ERROR,

vs.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE, A CORPORATION, DEFENDANT IN ERROR.

WRIT OF ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT AND DEFENDANT IN ERROR.

Statement.

The respondent and defendant in error in the above causes has not been served with any brief by the petitioner and plaintiff in error except a brief filed at the time the

petition for writ of certiorari was heard by this court. The statement of fact in that brief contained is substantially correct except that there were two cases before the Supreme Court of Illinois, identical in every respect except as to plaintiffs and the amount of judgment. The judgment in the other action—Gustin, as administrator, *vs.* Supreme Lodge of the World, Loyal Order of Moose—was reversed by the Supreme Court of Alabama while the matter was pending in the Supreme Court of Illinois. No further proceedings were had as to that case. The statement is erroneous in asserting that the respondent and defendant in error filed a plea of the general issue in the Circuit Court for the Sixteenth Circuit of Illinois. The plea was purely and solely to the jurisdiction of that court to entertain the cause of action, setting forth that the original cause of action on which the judgment was based was for a death caused and occurring in the State of Alabama.

POINTS AND AUTHORITIES.

A.

Questions of Practice.

(1) The writ of error in this matter should be dismissed because

(*a*) The matter sought to be reviewed by this court can only be considered upon writ of certiorari, and not by writ of error.

P. & R. Coal & Iron Co. *vs.* Gilbert, 245 U. S., 162.
Bruce *vs.* Tobin, 245 U. S., 18.
Ireland *vs.* Wood, 246 U. S., 327.
N. P. Ry. *vs.* Solum, 247 U. S., 477.

(*b*) The assignments of error are too general and no alleged error is specifically designated.

Sholey *vs.* Rew, 23 Wall., 331.
T. & P. Ry. *vs.* Archibold, 170 U. S., 665.
Harding *vs.* Illinois, 196 U. S., 78.

(2) We respectfully contend that the writ of certiorari should be dismissed because the application therefor was not timely submitted under the rules of this court and the statutes of the United States.

(Respondent's brief filed on the hearing of application for writ.)

B.

The Supreme Court of Illinois Committed no Error.

(1) A State court is free to determine its own jurisdiction absolutely without reference to the full faith and credit clause of the Federal Constitution.

Anglo-American Provision Co. *vs.* Davis Provision Co., 191 U. S., 373; 48 L. Ed., 225.
Walton *vs.* Pryor, 276 Ill., 563.
Dougherty *vs.* American-McKenna Co., 255 Ill., 369.
Wisconsin *vs.* Pelican Insurance Co., 127 U. S., 265; 32 L. Ed., 239.
Fauntleroy *vs.* Lum, 210 U. S., 230; 52 L. Ed., 1039.

(2) Where an action is brought upon a judgment of a sister State the court may always examine the nature of the cause of action upon which the judgment is founded for the purpose of determining if it would have jurisdiction of the real subject-matter of the action, and if it appears that the

court would not have jurisdiction of the original action, it will not have jurisdiction of an action on the judgment.

Wisconsin *ex.* Pelican Insurance Co., 127 U. S., 265; 32 L. Ed., 239.

Fauntleroy *ex.* Lum, 210 U. S., 230; 52 L. Ed., 1039.

Carpenter *ex.* Real-McDonnell Co., 222 Fed., 453.

Anglo-American Provision Co. *ex.* Davis Provision Co., 191 U. S., 373; 48 L. Ed., 225.

Oklahoma *ex rel.* West *ex.* Gulf, C. & S. F. R. Co., 220 U. S., 290; 55 L. Ed., 469.

(3) The provision of section 2 of chapter 70, Revised Statutes of Illinois, that no action shall be brought or prosecuted in this State to recover damages for a death occurring outside of this State is a jurisdictional provision.

Walton *ex.* Pryor, 276 Ill., 563.

Dougherty *ex.* American McKenna Co., 255 Ill., 369.

This provision is constitutional and does not violate the full faith and credit clause of the Federal Constitution or the clause entitling the citizens of each State to all the privileges and immunities of the citizens of the several States.

Walton *ex.* Pryor, 276 Ill., 563.

Dougherty *ex.* American McKenna Co., 255 Ill., 369.

Chambers *ex.* Baltimore & Ohio R. R. Co., 207 U. S., 142; 52 L. Ed., 143.

(4) The provision of the Alabama statute that an action for death by wrongful act shall be brought in a court of competent jurisdiction within the State of Alabama and not elsewhere, is jurisdictional, and no court outside of the State of Alabama has jurisdiction of the subject-matter of such an action.

40 Cyc., 46.

40 Cyc., 81.

40 Cyc., 87.

22 Enc. Pl. & Pr., 786.

40 Cyc., 28.
Eachus *vs.* Trustees, 17 Ill., 534.
Ellenwood *vs.* Marietta Chair Co., 158 U. S., 105; 39 L. Ed., 913.
Reynolds *vs.* Day, 79 Wash., 499; 140 Pac., 681.
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12 Corpus Juris, 441.
So. Pac. Co. *vs.* Dusablon, 48 Tex. Civ. A., 203; 106 S. E., 766.
Pollard *vs.* Bailey, 87 U. S., 520; 22 L. Ed., 376.

ARGUMENT.

The plaintiff in error has filed nine assignments of error. The first and second are that the Supreme Court of Illinois erred in affirming and in not reversing the judgment of the Circuit Court of Illinois, without specifying any particular error.

The third assignment is that plaintiff in error has been deprived of the constitutional right to have a judgment rendered in Alabama given full faith and credit in the courts of Illinois.

The fourth and fifth assignments are that the Circuit Court of Illinois erred in not sustaining plaintiff's demurrer and in rendering judgment for the defendant.

The sixth and eighth assignments are that the judgment of the court of Illinois is contrary to the law of the Constitution of the United States, without specifying any clause or section thereof that is violated.

The seventh assignment states that the judgment of the Illinois court is contrary to article I, section 4 of the Constitution of the United States, same being the full faith and credit clause.

The ninth assignment is that section 2 of the injury act of Illinois was wrongfully interpreted by the State court of Illinois, without stating any particular ground of error or

designating any right that plaintiff in error was deprived of by reason of the alleged interpretation.

The first and second assignments are too general and broad and must be disregarded.

> "An assignment of error that simply avers that the Court of Appeals erred in affirming the judgment of the trial court, without any specification of any particular error committed must be dismissed."
> T. & P. R. R. *vs.* Archibold, 170 U. S., 665-668.

The fourth and fifth assignments have no greater standing.

> "It is very doubtful whether an assignment that the decision of the Circuit Court is for the wrong party, is sufficient to suggest any question for decision."
> Scholey *vs.* Rew, 23 Wall., 331.

The sixth, eighth and ninth assignments are insufficient for failure to designate the provision of the Federal Constitution which plaintiff in error contends is denied.

> "An allegation that the statute is contrary to the Constitution of the United States, without calling attention to the provision of that instrument, whose protection is denied to plaintiff in error, is clearly insufficient.
> Harding *vs.* Illinois, 196 U. S., 78.

There remains but the third and seventh assignments—that plaintiff in error was deprived of the right to have his Alabama judgment given full faith and credit by the Illinois court—that said judgment by the Illinois court is contrary to article I, section IV of the Federal Constitution.

Defendant in error contends that the only review of said subject-matter is by certiorari.

Section 237 of the Judicial Code provides for the method of reviewing causes in the United States Supreme Court; describes the several writs, and defines their scope and limitation. Writs of error are only applicable as proper procedure to review judgments of State courts, whenever "is

drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision is against their validity, or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity."

The case at bar does not involve any question provided for in the quoted portions of said section. The plaintiff in error contends that he has been deprived of a right granted to him by the Federal Constitution. Denial of such right can only be reviewed by writ of certiorari as provided for in said section 237, Judicial Code, which provides, "Where any title, right, privilege or immunity is claimed under the Constitution * * * and the decision is either in favor of or against the title, right, privilege or immunity, especially set up or claimed * * * under the Constitution," that said judgment either denying or granting said title, right, privilege or immunity can be reviewed in the Supreme Court of the United States by writ of certiorari only.

P. & R. Coal & Iron Co. *vs.* Gilbert, 245 U. S., 162.
Bruce *vs.* Tobin, 245 U. S., 18.
Ireland *vs.* Wood, 246 U. S., 327.
N. P. R. R. *vs.* Solum, 247 U. S., 477.

We respectfully submit that the writ of certiorari herein should not have been granted and should be dismissed now, but do not desire to reargue that point in this brief. We submitted a brief when the petition for the issuance of the writ was submitted to the court, and that brief is now in the files of this case. We respectfully refer to that brief and here urge all the points and authorities there urged.

The Supreme Court of Illinois Committed no Error.

The issue of law in this case is clear cut. We say that there are no exceptions to section I of article IV of the Federal Con-

stitution. A judgment of a court of competent jurisdiction is always entitled to full faith and credit in the courts of another State, and can in no event be re-examined on the merits.

Where, however, there is a question of the jurisdiction of the court in which the action is brought on the judgment to entertain the action, then the court may examine enough to determine if it has jurisdiction of the original subject-matter of the action. The mere form of the action never precludes a court from inquiring fully to determine its jurisdiction, and it is the substance and not the form that the court will look to in determining the question.

We contend that the Illinois courts did not have jurisdiction, for two reasons:

1st. That the Supreme Court of Illinois has held that the statute forbidding bringing an action in that State to recover for a death occurring outside of the State was jurisdictional, and hence the Illinois courts were without power to entertain such an action.

2d. That the Alabama statute regarding the survival of a cause of action for death provided that the action might be brought "in a court of competent jurisdiction in the State of Alabama *and not elsewhere,*" created a cause of action local only in character, as distinguished from transitory actions, and hence the courts of Illinois have no jurisdiction of such actions.

I.

A State court is free to determine its own jurisdiction absolutely, without reference to the full faith and credit clause of the Federal Constitution.

In Anglo-American Provision Co. *vs.* Davis Provision Co., 191 U. S., 373, an Illinois corporation sued another Illinois corporation in the New York Supreme Court on an Illinois

judgment. The New York court denied the remedy under a statute which it held was jurisdictional. This court, when the case came before it, held that it was bound by the construction of the New York court as to its jurisdiction, and it further held that under the full faith and credit clause of the Federal Constitution the State of New York was not bound to furnish a court in which action might be brought on a judgment. This was said:

> "If the plaintiff can find a court into which it has a right to come, then the effect of the judgment is fixed by the Constitution and the act in pursuance of which Congress has passed * * * but the Constitution does not require the State to provide such a court."

II.

Where an action is brought upon a judgment of a sister State, the court may always examine the nature of the cause of action upon which the judgment is founded for the purpose of determining if it would have jurisdiction of the real subject-matter of the action, and if it appears that the court would not have jurisdiction of the original action, it will not have jurisdiction of an action on the judgment.

In Wisconsin *vs.* Pelican Ins. Co., 127 U. S., 265, an action was brought by the State of Wisconsin against the defendant to recover on a judgment obtained in one of its courts under a criminal statute. This court held that it did not have jurisdiction of the action on the judgment, because it said it would not have had jurisdiction of the action on which the judgment was founded.

This court held that the full faith and credit clause of the Constitution applied as well to the Federal courts as to the State courts, and this court held in that case that the provision of the Constitution and the statute enacted pursuant thereto "did not affect the jurisdiction either of the court in which the judgment is rendered or of the court in which it

is offered in evidence," and that "the technical rules, which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim) from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it."

In the brief filed in support of the application for certiorari counsel contended that the above case stood for the rule that there was an exception to the full faith and credit clause in the case of actions on penalties. Counsel grants that a court may examine back of a judgment to determine if it was founded on a penal statute, but counsel errs in assuming that there can be any exceptions to the provisions of the Constitution of the United States which are not of themselves incorporated in the Constitution. The Pelican case did not so hold. It held that the action could not be maintained, because the Supreme Court of the United States has not original jurisdiction of criminal actions. This court fully examined into the question of its jurisdiction and placed its decision squarely on that ground. This is clearly shown in Oklahoma *vs.* Gulf C. & S. F. R. R. Co., 220 U. S., 290, in which case this court held that it did not have original jurisdiction of a suit by a State against persons and corporations of other States to enforce by injunction obedience of the criminal laws of a State. This court held that while the action was civil in its nature, it would go back of the form of the action and determine its real purpose and effect, and this court cited and relied upon the case of Wisconsin *vs.* Pelican Ins. Co., *supra,* clearly marking and defining the real effect of the holding in the Pelican case.

In the Pelican case no attack was made on the judgment itself; no inquiry was made into the merits of the action; no question was raised as to whether it was right or wrong under the laws of Wisconsin, but the sole and only question was, had

this court jurisdiction of the cause of action? The binding force of the judgment was not questioned; it was given full faith and credit as a judgment, but the court said, "we have no jurisdiction of an action of that nature."

Counsel suggests that Fauntleroy *vs.* Lum, 210 U. S., 230, has modified and explained the Pelican case and robbed it of the principle we contend for.

But as a matter of fact, Fauntleroy *vs.* Lum absolutely follows the rule laid down in the Pelican case and the Anglo-American Provision Co. case. It clearly distinguishes between an attack upon the judgment or an inquiry into the merits of the judgment and the determining of a question of jurisdiction. This court said:

> "No doubt it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty of the court."

In other words, if the statute merely establishes a rule of law, then however much the judgment may be opposed to that rule of law, or however much it may be opposed to the public policy of the State, yet if the jurisdiction of the court in which the judgment is sued upon is not in question, the court cannot do otherwise than enter judgment upon the action.

Counsel have relied upon Christmas *vs.* Russell, 5 Wall., 290, as establishing a doctrine contrary to the holding of the Supreme Court of the State of Illinois. That case is clearly distinguished by this court in the Anglo-American Provision case, 191 U. S., 373, this court saying:

> "The plaintiff lays great stress upon Christmas *vs.* Russell, 5 Wall., 290; 18 L. ed., 475. In that case suit was brought in Mississippi on a Kentucky judgment against a citizen of Mississippi upon a promissory note made in Mississippi, and payable in New

> Orleans. A suit upon the note would have been barred by the Mississippi statute of limitations when the suit in Kentucky was begun, and the defendant set up a statute of Mississippi providing that no action should be maintained upon a judgment rendered in such circumstances without the State against a resident of the State. It was held that the statute was void, and that, as the judgment was valid in Kentucky, it could not be treated as invalid in Mississippi. It will be observed that this was a suit by a citizen. *There was no suggestion that the statute went to the jurisdiction of the court.* Obviously it did not. Indeed, the suit was brought in the United States Circuit Court. *The statute made no discrimination in the right to come into court,* according to the character of the plaintiff *or of the cause of action,* but attempted to create a *defense* against a plaintiff assumed to *have a right to come into court* and to invoke the jurisdiction. But when the plaintiff was in court, and exhibited his judgment, it was too late for the State to interfere. *In the case at bar the plaintiff had no right to come into the New York Supreme Court.*"

It seems to us that it must be that counsel has misconceived the force of the Pelican case, for he relies upon Beal *vs.* Carpenter, 235 Fed., 273, as sustaining his contention. It seems to us that Beal *vs.* Carpenter holds quite the contrary, for in that case it is said:

> "The decision in Wisconsin *vs.* Pelican Ins. Co. was that, as the *jurisdiction* of the Supreme Court over actions by a State is limited to controversies of a civil nature, it may look, *for the purpose of determining its jurisdiction,* into the nature of the cause of action on which the judgment upon which the State brought an action was founded, to determine whether or not the suit upon this judgment involved a controversy of a civil nature."

III.

The provision of section 2, chapter 70, Revised Statutes of Illinois, that no action shall be brought or prosecuted in this

State to recover damages for a death occurring outside of this State, is a jurisdictional provision.

That the Supreme Court of Illinois has held this provision to be jurisdictional is not open to controversy. It was first held in Dougherty *vs.* American McKenna Co., 255 Ill., 369, where an action was brought for a death occurring in New Jersey, that the courts of Illinois were without jurisdiction to entertain the action. The same was held in Walton *vs.* Pryor, 276 Ill., 563, where a motion was made after verdict to dismiss for want of jurisdiction. And the Supreme Court of Illinois has again reiterated the same principle in this case. (See Transcript of Record, page 35.)

This statute and the construction placed upon it by the Supreme Court of the State of Illinois does not violate the full faith and credit clause of the Federal Constitution or the clause entitling the citizens of each State to all the privileges and immunities of the citizens of the several States. The statute makes no distinction as to citizenship. A citizen of Illinois whose death is caused outside of the State leaves no cause of action which can be sued upon in Illinois, and the administrator of one whose death is caused outside of the State of Illinois has no greater rights as a citizen of the State of Illinois than has one who is not a citizen. The statute has been held constitutional in Dougherty *vs.* American McKenna Co., 255 Ill., 369, the court relying on Chambers *vs.* Baltimore & Ohio Railroad Co., 207 U. S., 142.

We do not rely alone upon the jurisdictional provision of the Illinois statute, although the Supreme Court of Illinois held the point made upon the Illinois statute sufficient without going into the question we urge as to the Alabama statute.

But it seems to us that it hardly lies with the plaintiff in this cause to complain that he is shut out of the Illinois courts when the very statute of Alabama which gave him his right of action, prescribed that it might be brought only in the courts of Alabama.

IV.

The provision of the Alabama statute that an action for death by wrongful act shall be brought in a court of competent jurisdiction within the State of Alabama and not elsewhere, is jurisdictional and no court outside of the State of Alabama has jurisdiction of the subject-matter of such an action.

This statute was set up in the special plea to the jurisdiction in the Circuit Court of Kane County, where the action on the judgment was brought. (See Transcript of Record, pages 25-26.) The provision of the Alabama statute here involved reads as follows:

> "A personal representative may maintain an action and recover such damages as the jury may assess, in a court of competent jurisdiction within the State of Alabama, *and not elsewhere*, for the wrongful act, omission or negligence of any person, etc."

We know that an action for wrongful death did not survive at common law, and of course when such a right is created it is created with such limitations as the legislature may see fit to impose. In the case of the Alabama statute the legislature has seen fit to make the action local as disinguished from transitory. Actions at common law were local or transitory according to their nature, but now the nature of the action is largely controlled by statute. In 40 Cyc., at page 46, it is said:

> "In nearly every American State the rules of venue now rests upon a basis which is wholly statutory. To a considerable extent these statutes have adopted the common-law rules of venue, as in actions which relate to land; but they involve distinctions in a line of arbitrary provisions which were unknown to common law."

The same in substance is said in 22 Ency. of Pl. & Pr., 786.

The State of Alabama has clearly made this action local, and it being local in its nature, it cannot be enforced in any court outside of that State. In Eachus *vs.* Trustees, 17 Ill., 534, an action was brought in Illinois to recover damages for overflowing land in Indiana caused by the erection of a dam in Illinois. The court said:

> "We are clearly of the opinion that the cause of action, and consequently the action itself, is of the class denominated local, and that the courts of the State within whose jurisdiction the lands lie, can alone take jurisdiction of it at common law."

In Ellenwood *vs.* Marietta Chair Co., 158 U. S., 195, an action was brought in the Circuit Court of the United States for the Southern District of Ohio for trespass in cutting and removing timber from lands of the plaintiff in the State of West Virginia. This court held that the action was local to the State of West Virginia and that the Circuit Court of the United States sitting in Ohio had no jurisdiction of the cause of action.

In Coyne *vs.* Southern Pac. Co., 155 Fed., 683, an action was brought in the Circuit Court of the United States for the District of Utah for damages for personal injuries inflicted in the State of Nevada. A statute of the State of Nevada provided for liability for personal injuries and provided:

> "Such liability, however, where not discharged by agreement and settlement shall exist only in so far as the same shall be ascertained and adjudged by a State or Federal court of competent jurisdiction in this State in an action brought for that purpose by the person injured."

A demurrer presented the question as to whether or not the action could be maintained in Utah. The demurrer was sustained, the court saying:

"The first section of the act quoted is declaratory of the common law theretofore existing in Nevada. The second section clearly limits the right. The statute as a whole supersedes the common law applicable to the subject. By a completeness of statement it covers the entire field, and was intended as a revision of the law. By section 4, not only conflicting statutes, but inconsistent laws, are repealed. Thereafter the plaintiff's right was no less an exclusively statutory right because the same facts would have created a right under prior common-law principles. Commonwealth *vs.* Marshall, 11 Pick. (Mass.), 350; 22 Am Dec., 377; Commonwealth *vs.* Cooley, 10 Pick. (Mass.), 37; Gorham *vs.* Luckett, 6 B. Mon. (Ky.), 146; Gwinner *vs.* Lehigh, etc., R. R. Co., 55 Pa., 126. Viewed as a statutory right, it must be admitted that the State creating the right can attach to it any valid condition, so that, *when the right is sought to be vindicated in another State or in a foreign country, the condition must also be applied.* Hamilton *vs.* R. R. Co., 39 Kan., 56; 18 Pac., 57; Slater *vs.* Mexican Nat. R. R. Co., 194 U. S., 120; 24 Sup. Ct., 581; 48 L. Ed., 900; Minor's Conflict of Laws, Sec. 202. 'As the only source of this obligation is the law of the place of the act, it follows that that law determines not merely the existence of the obligation (Smith *vs.* Condry, 1 How. (U. S.), 28; 11 L. Ed., 35), but equally determines its extent.' * * *

"At common law such an action as this was transitory, and a suit for trespass to real property local; *but this common-law distinction is not removed from legislative control*, and, when the place of trial is attached to the right as a condition, I know of no authority to *recognize the right and ignore the condition*, unless it is violative of some superior law."

The above case clearly recognizes the fact that a transitory action may be made local and the court says in effect that this action for injuries which at common law was transitory has been made a local action the same as were actions for trespass to real property at common law. It fully recognizes the right of a legislature to make an action which is

ordinarily transitory a local one, giving it the jurisdictional features which local actions have.

In 12 Corpus Juris, at page 441, under the subject of Conflict of Laws, it is said:

> "The courts of one State will not, on principles of comity, take cognizance of a cause of action arising in another State under a statute which forbids the bringing of suit thereon in any other State or Territory."

This proposition is supported by the case of Southern Pac. Co. *vs.* Dusablon, 48 Tex. Civ. A., 203; 106 S. E., 766. The case, however, goes much further than the text which it supports would indicate. It puts the proposition squarely on jurisdictional grounds. Action was brought in the State of Texas for personal injuries inflicted in New Mexico. A plea to the jurisdiction was filed, which was overruled and an appeal was taken. The statute of the Territory of New Mexico provided in part as follows:

> "Whereas it has become customary for persons claiming damages for personal injuries received in this Territory to institute and maintain suits for the recovery thereof in other States and Territories, to the increased cost and annoyance and manifest injury and oppression of the business interests of this Territory, and in derogation of the dignity of the courts thereof; therefore be it enacted by the Legislative Assembly of the Territory of New Mexico:
>
> * * * * * * *
>
> "Sec. 3. It shall be unlawful for any person to institute, carry on or maintain any suit for the recovery of any such damages in any other State or Territory."

On the point presented by section 3 of the statute above quoted the court disposed of the case, speaking as follows:

> "Can this action, in view of the statute under consideration, be maintained by him in any jurisdiction

> except that Territory? It cannot be said that a citizen is not to be governed and bound by the laws of his own country; nor can he, in disregard of such laws, go into the courts of another country and ask them as a matter of comity to redress wrongs which the laws of his domicile require him to seek redress in the courts of his own country. The very principle upon which comity between foreign or sister States is based repels the idea that he has even the shadow of a claim to any such right. As we said in the Sowers case: 'The right of injured parties to recover damages from the negligent inflictor of the injuries is recognized in New Mexico, although the recognition carries with it burdensome and vexatious conditions, of which, however, if its citizenship is willing to endure them, no one is in a position to complain.' The honor one enjoys in being a resident of a Territory whose Legislature has such an exalted idea of the 'dignity' of its courts, and tender consideration for its 'business interests', manifested by the statute in question, must be taken *cum onere*. We therefore conclude that the district court was *without jurisdiction* of this case, and that it erred in not sustaining defendant's exception and plea to its jurisdiction."

In Pollard *vs.* Bailey, 87 U. S., 520; 22 L. Ed., 376, the statute of Alabama made stockholders of a bank individually liable for its debts, and according to the construction given to it by the Supreme Court of the State the remedy provided was a suit in equity, whereas in that case a single creditor had sued one of the stockholders in an action at law; and in denying the right to maintain such action this court observed:

> "The individual liability of stockholders in a corporation for the payment of its debts is always a creature of statute. At common law it does not exist. The statute which creates it may also declare the purposes of its creation, and provide for the manner of its enforcement. * * * The liability and the remedy were created by the same statute. This being

> so, *the remedy provided is exclusive of all others.* A general liability created by statute without a remedy may be enforced by an appropriate common-law action. But where the provision for the liability is coupled with a provision for a special remedy, *that remedy, and that alone, must be employed.*"

We observe that both Alabama and Illinois, through their legislatures, have declared that the Illinois courts shall not have jurisdiction of an action for a death occasioned in Alabama. The principle is plain and universal that the form of the action cannot change its substance and vest jurisdiction where it is in fact lacking. Nor did the Constitution change this rule of law. The full faith and credit clause does not purport to vest courts with jurisdiction contrary to the laws of the States, and this principle is fully recognized in Anglo-American Provision Co. *vs.* Davis Provision Co., 191 U. S., 373.

It is undoubtedly true that if a legislature enacts any law for the purpose of preventing a recovery on judgments of foreign States, such law will be held in conflict with the Federal Constitution as in Christmas *vs.* Russell, 5 Wall., 290, but the Illinois act was construed as to its jurisdictional features in cases not involving actions on judgments, and the good faith of her court is not open to question.

An attempt is made to distinguish the Anglo-American Provision Co. case, but a thorough analysis of that case leaves us confronted with the conclusion that where the court in which the judgment is offered has no jurisdiction it cannot be enforced, and in that case this court said the Pelican case stands for this same principle.

Counsel intimates that this court has in some manner modified its holding in the Anglo-American case by language used in Rogers *vs.* State of Alabama, 192 U. S., 226 (Brief, page 11), stating that it is a later decision (it was decided forty-nine days later). The language there used was with ref-

erence to questions of jurisdiction of the court in which the judgment was originally rendered, and we believe, as does counsel, that the same rule applies when considering questions of the jurisdiction of the court in which the judgment is offered. As this court said in that case, while the State court decides questions of its own jurisdiction, this court may still inquire if the ground of the decision of the State court is a real one or whether it was set up as an evasion. The Illinois court having passed upon this jurisdictional question in previous cases not involving suits on judgments, it would seem that this point hardly warrants further consideration.

Counsel contends that the Constitution of the United States must be interpreted in the light of the "atmosphere of the law" as it existed at the time of its adoption (Brief, pages 8, 9, and 12), forgetting that as important an element of that atmosphere as any that has been mentioned is this: that the courts of a sovereign State are supreme in the determination of their jurisdiction, a principle expressly recognized in the Anglo-American Provision Co. case. This court in Fauntleroy *vs.* Lum, 210 U. S., 230, recognized the application of this principle to an action on a judgment in a proper case when it said:

> "No doubt it sometimes may be difficult to decide whether certain words in a statute *are directed to jurisdiction or merits*, but the distinction between the two is plain. *One goes to the power, the other only to the duty, of the Court.*"

It is asserted that the State court in Fauntleroy *vs.* Lum had interpreted its statute as denying jurisdiction to its courts (Brief, page 12). In our brief in the State court we pointed out that the Mississippi court had not so held. That court said in 80 Miss., 757 (32 So., 290):

> "Until the Supreme Court of the United States shall expressly so declare, we will not hold that a contract condemned by our civil and criminal laws

> as immoral, and which the courts of this State are prohibited from enforcing, is sanctified and purged of its illegality, by judgment rendered in another State against a citizen of this State, sued and served with process on being found temporarily in the jurisdiction of the court, so that in a suit here on such judgment the illegal character of the cause of action may not be inquired into."

This court recognized that the Mississippi statute did not go to the *jurisdiction* of the State court, but only announced a *rule of decision*, distinguishing that case from the Anglo-American Provision Co. case.

We believe that under the review statutes and the rules of practice in this court counsel is not in a position here to urge the points presented in his brief filed on application for a writ of certiorari.

It is our conviction, however, that careful consideraton of the merits of the cause leads irresistibly to the conclusion that the Supreme Court of Illinois could not hold otherwise than it did, in view of its previous holdings on the jurisdictional features of the statute. The provisions of the Alabama statute constitute a second equally conclusive reason for the holding of the Illinois trial court.

Respectfully submitted,

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Of Counsel.

KENNEY, ADMINISTRATOR OF KENNEY, *v.* SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE.

CERTIORARI AND ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Nos. 269, 303. Argued March 23, 1920.—Decided April 19, 1920.

A statute denying jurisdiction to the courts of Illinois in actions for damages occasioned by death occurring in another State in consequence of wrongful conduct was construed by the Supreme Court of the State as applying equally to an action on a sister-state judgment founded on such a cause of action. *Held*, that, so applied, it contravened the full faith and credit clause of the Constitution. P. 414.

The law of Alabama, which gives a right of action in that State for death by wrongful act, cannot, by its declaration that such actions may not be maintained elsewhere, affect the right to enforce by action in another State a judgment recovered on such a cause of action in Alabama. P. 415.

A judgment of a state supreme court giving a meaning and effect to a statute of the State which brings it in conflict with the Federal Constitution is reviewable by writ of error. P. 416.

285 Illinois, 188, reversed; writ of certiorari dismissed.

THE case is stated in the opinion.

Mr. G. R. Harsh for petitioner and plaintiff in error.

Mr. E. J. Henning, with whom *Mr. Ralph C. Putnam* was on the briefs, for respondent and defendant in error:

The matter sought to be reviewed in this court can only be considered upon writ of certiorari, and not by writ of error. *Philadelphia & Reading C. & I. Co.* v. *Gilbert*, 245 U. S. 162; *Bruce* v. *Tobin*, 245 U. S. 18; *Ireland* v. *Woods*, 246 U. S. 327; *Northern Pacific Ry. Co.* v. *Solum*, 247 U. S. 477. The writ of certiorari should be dismissed because the application was not timely submitted under the rules of this court and the statutes of the United States.

A state court is free to determine its own jurisdiction, without reference to the full faith and credit clause of the Federal Constitution. *Anglo-American Provision Co.* v. *Davis Provision Co.*, 191 U. S. 373.

Where an action is brought upon a judgment of a sister State, the court may always examine the nature of the cause of action upon which the judgment is founded for the purpose of determining if it would have jurisdiction of the real subject-matter of the action, and, if it appears that the court would not have jurisdiction of the original action, it will not have jurisdiction of an action on the judgment. *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265. In the *Pelican Case*, the binding force of the judgment was not questioned; it was given full faith and credit as a judgment, but the court said, "we have no jurisdiction of an action of that nature." *Fauntleroy* v. *Lum*, 210 U. S. 230, follows the rule laid down in the *Pelican Case* and the *Anglo-American Provision Co. Case.* It clearly distinguishes between an attack upon the judgment or an inquiry into the merits of the judgment and the determining of a question of jurisdiction. *Christmas* v. *Russell*, 5 Wall. 290, establishes no contrary doctrine, as is clearly shown by the discussion in the *Anglo-American Provision Co. Case.*

That the Illinois statute is jurisdictional is held by

Dougherty v. *American McKenna Co.*, 255 Illinois, 369, and *Walton* v. *Pryor*, 276 Illinois, 563. It makes no distinction as to citizenship, and as here applied it does not violate the full faith and credit or privileges and immunities provisions of the Constitution. See *Dougherty* v. *American McKenna Co.*, *supra*, relying on *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142.

The provision of the Alabama statute that an action for death by wrongful act shall be brought in a court of competent jurisdiction within the State of Alabama and not elsewhere is jurisdictional, and no court outside of the State of Alabama has jurisdiction of the subject-matter of such an action.

It has the effect of making the action local and unenforceable in other jurisdictions. 40 Cyc. 46; 22 Ency. Pl. & Pr. 786; *Eachus* v. *Trustees*, 17 Illinois, 534; *Ellenwood* v. *Marietta Chair Co.*, 158 U. S. 195; *Coyne* v. *Southern Pacific Co.*, 155 Fed. Rep. 683; 12 Corpus Juris, 441; *Southern Pacific Co.* v. *Dusablon*, 48 Tex. Civ. App. 203; *Pollard* v. *Bailey*, 20 Wall. 520.

We observe that both Alabama and Illinois, through their legislatures, have declared that the Illinois courts shall not have jurisdiction of an action for a death occasioned in Alabama. The principle is plain and universal that the form of the action cannot change its substance and vest jurisdiction where it is in fact lacking. Nor did the Constitution change this rule of law. The full faith and credit clause does not purport to vest courts with jurisdiction contrary to the laws of the States, and this principle is fully recognized in *Anglo-American Provision Co.* v. *Davis Provision Co.*, 191 U. S. 373.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an action of debt brought in Illinois upon a judgment recovered in Alabama. The defendant pleaded

to the jurisdiction that the judgment was for negligently causing the death of the plaintiff's intestate in Alabama. The plaintiff demurred to the plea, setting up Article IV, §§ 1 and 2 of the Constitution of the United States. A statute of Illinois provided that no action should be brought or prosecuted in that State for damages occasioned by death occurring in another State in consequence of wrongful conduct. The Supreme Court of Illinois held that as by the terms of the statute the original action could not have been brought there, the Illinois Courts had no jurisdiction of a suit upon the judgment. The Circuit Court of Kane County having ordered that the demurrer be quashed its judgment was affirmed. 285 Illinois, 188.

In the court below and in the argument before us reliance was placed upon *Anglo-American Provision Co.* v. *Davis Provision Co., No. 1,* 191 U. S. 373, and language in *Wisconsin* v. *Pelican Insurance Co.,* 127 U. S. 265, the former as showing that the clause requiring full faith and credit to be given to judgments of other States does not require a State to furnish a court, and the latter as sanctioning an inquiry into the nature of the original cause of action in order to determine the jurisdiction of a court to enforce a foreign judgment founded upon it. But we are of opinion that the conclusion sought to be built upon these premises in the present case cannot be sustained.

Anglo-American Provision Co. v. *Davis Provision Co.* was a suit by a foreign corporation on a foreign judgment against a foreign corporation. The decision is sufficiently explained without more by the views about foreign corporations that had prevailed unquestioned since *Bank of Augusta* v. *Earle,* 13 Pet. 519, 589–591, cited 191 U. S. 375. Moreover no doubt there is truth in the proposition that the Constitution does not require the State to furnish a court. But it also is true that there are limits to the power of exclusion and to the power to consider the nature of

the cause of action before the foreign judgment based upon it is given effect.

In *Fauntleroy* v. *Lum*, 210 U. S. 230, it was held that the courts of Mississippi were bound to enforce a judgment rendered in Missouri upon a cause of action arising in Mississippi and illegal and void there. The policy of Mississippi was more actively contravened in that case than the policy of Illinois is in this. Therefore the fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment. See *Christmas* v. *Russell*, 5 Wall. 290; *Converse* v. *Hamilton*, 224 U. S. 243. But this being true, it is plain that a State cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to courts otherwise competent. The assumption that it could not do so was the basis of the decision in *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 111, 112, and the same principle was foreshadowed in *General Oil Co.* v. *Crain*, 209 U. S. 211, 216, 220, 228, and in *Fauntleroy* v. *Lum*, 210 U. S. 230, 235, 236. See *Keyser* v. *Lowell*, 117 Fed. Rep. 400; *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 148, and cases cited. Whether the Illinois statute should be construed as the Mississippi act was construed in *Fauntleroy* v. *Lum* was for the Supreme Court of the State to decide, but read as that court read it, it attempted to achieve a result that the Constitution of the United States forbad.

Some argument was based upon the fact that the statute of Alabama allowed an action to be maintained in a court of competent jurisdiction within the State "and not elsewhere." But when the cause of action is created the invalidity of attempts to limit the jurisdiction of other States to enforce it has been established by the decisions of this court; *Tennessee Coal, Iron & R. R. Co.* v. *George*, 233 U. S. 354; *Atchison, Topeka & Santa Fe Ry. Co.* v. *Sowers*, 213 U. S. 55; and had these decisions been other-

wise they would not have imported that a judgment rendered exactly as required by the Alabama statute was not to have the respect due to other judgments of a sister State.

As the judgment below upheld a statute that was invalid as construed the writ of error was the proper proceeding and the writ of certiorari must be dismissed.

Judgment reversed.